

AGE OF CONSENT COMMITTEE

EVIDENCE

1928-1929

Volume II

Oral Evidence and Written Statements
of

Witnesses from the Bombay Presidency
(Karachi and Ahmedabad).



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EVIDENCE

TABLE OF CONTENTS.

N.B.—Dr. stands for Doctor.

L. " Lady.
M. " Mohamedans.
T. " Texts.

QUESTIONNAIRE	PAGES. xiii—xvi
ORAL EVIDENCE OF WITNESSES AND THEIR WRITTEN STATEMENTS .	1—501

No.	—	Names.	Place and Designation.	PAGES.	
				Written Statements.	Oral Evidence.
KARACHI (SIND).					
1	..	Mr. G. T. Hingorani, M.B.B.S., L.M., F.R.C.S.	President. Karachi Hindu Sabha. Karachi.	1—2	2—12
2	..	Mr. Jamshed N. R. Mehta.	President. Karachi Municipality.	12—13	13—20
3	..	Rao Bahadur Dr. P. T. Kothary, L.M. and S., F.C.P.S., B.M.S.	Civil Surgeon, Sukkur	20	20—27
4	..	Dr. R. V. Shivesh- warkar.	Assistant Director of Public Health, Sind.	..	27—33
5	M.	Khan Bahadur Wali Muhammad Hasan Ali.	Special Magistrate. Karachi.	..	33—42
6	..	Mr. Kalumal Pahlumal, B.A., LL.B.	Judge, Court of Small Causes, Karachi.	42—44	44—50
7	..	Dr. E. D. Shroff .	Medical Practitioner, Karachi.	..	50—54
8	..	Mr. Virumal Begraj .	Representative of the Hindu Panchayat, Sukkur.	54—56	56—67
9	..	Rao Bahadur Shiv Ratan Mohota.	Rais, Karachi . .	..	68—74
10	..	Mr. Darshan Singh Bakhsi.	Secretary, Jamrao Sikh Association, P. O. Mool Singh, Sind.	75	75—79

(14)

No.	—	Names.	Place and Designation.	PAGES.	
				Written Statements.	Oral Evidence.
KARACHI (SIND)—contd.					
11	L.	Miss Agnes Khemchand.	Organising Secretary for Sind, All India Women's Conference for Educational Reforms, Hyderabad.	79—80	80—85
12	..	Mr. Rupchand Bilaram	Additional Judicial Commissioner of Sind.	85—93	93—101
13	M.	Haji Abdulla Haroon	Member, Legislative Assembly, Karachi.	..	101—108
14	..	Rao Bahadur Hiranand Khem Singh.	Hyderabad	108—109	110—116
15	..	Mr. C. A. Buch	Karachi	116—118	118—128
16	L. Dr.	Miss Newnes	Medical Practitioner	..	128—131
17	L. Dr.	Dr. Miss D. Bolton, W.M.S.	Lady Doctor-in-charge, Zenana Hospital, Dera Ismail Khan.	131	131—134
18	M.	Mir Ayub Khan	Bar-at-Law, Karachi	..	134—138
19	..	Diwan Lal Chand Navalrai.	Member, Legislative Assembly, Larkana.	138—140	140—148
20	..	Mr. D. D. Nanavati, I.C.S.	District and Sessions Judge, Sukkur.	148—151	151—158
21	L. Dr.	Mrs. Tara Bai	Medical Practitioner, Karachi.	..	158—161
22	..	Mr. Hira Lal Narayanji Ganatra.	Municipal Councillor, Karachi.	161—163	163—167
23	L. M.	Mrs. Tyabji	Karachi	..	167—170
24	M.	Khan Bahadur A. M. I. Umedally.	President, Local Board, Hyderabad.	171—172	..
25	..	Mr. Thakurdas Naraindas, M.A., LL.B.	Assistant Sessions Judge, Sukkur.	172—173	..
26	M.	Khan Bahadur Sheikh Yakub Wazir Mohammad, M.B.E., J.P., B.A.	Collector of Nawabshah.	173—175	..

No.	—	Names.	Place and Designation.	PAGES.	
				Written Statements.	Oral Evidence.
KARACHI (SIND)— <i>contd.</i>					
27	..	Mr. Dilmul Daulatram, B.A., LL.B.	Sessions Judge, Larkana.	175—178	..
28	..	Mr. Bana Singh Jathanand Hingorani.	Retired First Class Sub-Judge, Tharushah, District Nawabshah.	178—180	..
29	M.	Mr. Mahomed Bachal Memon, B.A., LL.B.	Sub-Judge, Jacobabad	180—181	..
30	..	Professor S. N. Phorwani, M.A.	Organiser, Women's Health and Education Society, Shikarpur.	181—182	..
31	..	Mr. Udharan Chandmal, B.A.	Zamindar, Shahdampur (Sind).	182—183	..
32	M.	Khan Bahadur Chaker Khan Subhan.	Special 2nd Class Magistrate, Kandhkote (U. S. F.), Jacobabad.	183—184	..
33	..	Mr. Rewa Chaud Idarnal.	City Magistrate, Hyderabad.	184—186	..
34	..	Mr. G. D. Khosla, I.C.S.	S. D. O., Bhakkar	186—187	..
35	M.	Khan Bahadur Mian Pirbux, C.I.E.	President, District Local Board, Sukkur.	187—188	..
36	M.	Mr. Amadi	Hyderabad	188	..
37	..	Mr. W. N. Richardson	City Magistrate, Karachi.	189—190	..
AHMEDABAD (GUJERAT).					
1	L.	Mrs. Naniben Vaishnav	A. G. Maternity Home, Ahmedabad.	..	191—193
2	Dr.	Dr. Manilal H. Bhagat, L.M. and S.	Vice-President, The Ahmedabad Medical Society.	193—194	194—206
3	Dr.	Dr. G. R. Talwalkar, L.M. and S.	Medical Practitioner, Ahmedabad.	206—208	208—219
4	..	Rai Bahadur Govindbhai H. Desai, B.A., LL.B.	Naib Dewan, Baroda	219—222	222—230

No.	—	Names.	Place and Designation.	PAGES.	
				Written Statements.	Oral Evidence.
AHMEDABAD (GUJERAT)—contd.					
5	..	Mr. Mangaldas Girdhardas Parekhi.	Mill-owner, Ahmedabad.	230—232	232—235
6	L. Dr.	Dr. (Miss) D. J. Medora.	Medical Practitioner, Ahmedabad.	..	235—240
7	T. M.	Kazi Sayed Nuruddin Husein Ahmed Husein.	Kazi of Broach . .	240—243	243—249
8	M.	Syed Nawab Ali, M.A., L.T., F.U.B.	Principal, Bahauddin College, Junagadh.	249—250	250—260
9	Dr.	Rao Sahib Dr. Shankarlal K. Vyas.	Retired Senior Grade F. C. S. A. S., Ahmedabad.	260—261	261—265
10	Dr.	Dr. M. K. Pandit .	For the Lady-in-charge, V. J. Hospital, Ahmedabad.	..	265—267
11	..	Mr. Dolatram U. Shah, B.A., LL.B.	President, Ahmedabad Municipality.	267—269	270—278
12	M.	Syed Badi-ud-din alias Syed Ghulam Shah.	Mohalla Daryapur, Ahmedabad.	278—279	279—281
13	..	Mr. Maganbhai Chaturbhai Patel, B.A., LL.B., Bar-at-Law.	Ahmedabad . .	281—285	285—295
14	L.	Lady Vidyagavri Ramanbhai Nilkanth.	Ahmedabad . .	295—297	297—305
15	L.	Miss I. N. Bhagvat, B.A. (Oxon.)	Principal, S. L. V. Mahila Pathshala, Ahmedabad.	305—306	307—313
16	..	Mr. Gatulal G. Dhru .	Secretary, The Gujerat Social Reform Association.	313—315	315—319
17	Dr.	Dr. A. M. Seervai .	Health Officer, Ahmedabad Municipality.	..	319—321
18	M.	Mr. Ismail I. Chundrigar, B.A., LL.B.	Honorary Secretary, Anjuman-i-Islami a, Ahmedabad.	321—326	326—339
19	..	Messrs. Ratilal Jivanlal Lakhia, LL.B., and Mulechand A. Shah, LL.B.	On behalf of the Bar Association, Ahmedabad.	339—340	340—349

No.	—	Names.	Place and Designation.	PAGES.	
				Written Statements.	Oral Evidence.
AHMEDABAD (GUJERAT)— <i>contd.</i>					
20	L.	Mrs. Aruna Devi Mukerjee.	Mehsana (Baroda State).	349—351	351—355
21	..	Mr. Bhogilal Chotalal Sutaria.	Cloth Merchant, Ahmedabad.	..	356—359
22	..	Mr. Ambalal Sarabhai	Mill-owner, Ahmedabad	..	359—366
23	..	Mr. Dahyabhai Ijatram	Pleader, Ahmedabad .	366—367	367—374
24	..	Diwan Bahadur Ambashankar Uttamram Malji.	Honorary Organiser, Co-operative Societies, Broach.	374—375	375—388
25	..	Mr. N. D. Mehta .	Ahmedabad . .	..	388—398
26	..	Mr. Dahyabhai P. Derasari.	Bar-at-Law, Ahmedabad.	398—399	400—404
27	..	Mr. Motibhai Ottambhai Patel, B.A.	Assistant Commissioner, N. D. Ahmedabad.	405—406	..
28	..	Mr. D. R. Norman, I.C.S.	District and Sessions Judge, Kathiawar.	406—407	..
29	..	Mr. Lallubhai C. Seth	Joint Sub-Judge, Nadiad.	407—408	..
30	..	Sardar Rao Bahadur Motilal Chunilal.	Retired Deputy Collector, Broach.	408—409	..
31	L. Dr.	Dr. N. Proctor Sims, M.R.C.S. (Eng.), L.R.C.P. (London).	Medical Officer-in-charge, Coronation Zenana Hospital, Junagadh.	409—410	..
32	M.	Khan Saheb Kasambhai Haji Hasanbhai Gator.	Bench Magistrate, Nadiad.	410—413	..
33	..	Mr. S. M. Shah . .	Editor, "Gujerati Punch," Ahmedabad.	413—414	..
34	..	Mr. K. K. Thakor, B.A., LL.B.	District Judge, Kaira (Nadiad).	415—416	..
35	Dr.	Dr. P. P. Balsara, L.M.S. (B.M.S.).	Civil Surgeon, Broach	417—418	..
36	M.	Mr. Z. D. Ahmad, M.A., LL.B.	District Superintendent of Police, Panch Mahals (Godhra).	418—420	..

No.	—	Names.	Place and Designation.	PAGES.	
				Written Statements.	Oral Evidence.
AHMEDABAD (GUJERAT)— <i>contd.</i>					
37	..	Mr. Chandulal D. Sheth, LL.B.	Secretary, Bar Association, Surat.	420	..
38	..	Mr. Thakorlal Maneklal Bhagat, B.A., LL.B.	2nd Joint Sub-Judge, Ahmedabad.	420—421	..
39	..	Mr. S. K. Wodeyar, L. Ag.	District Deputy Collector, Ahmedabad.	421—423	..
40	M.	Khan Bahadur Shaikh Ali Baakza, J. P.	Surat	423—424	..
41	..	Rao Bahadur H. N. Gosalia.	Civil Sub-Judge, Kathiawar, Rajkot.	424—427	..
42	Dr.	Dr. Dhanjibhai H. Mehta.	Retired Sanitary Commissioner, Baroda State (Naosari).	427—429	..
43	..	Sardar Davar T. K. Modi, B.A., LL.B.	Bar-at-Law, Surat .	429—430	..
44	..	Meherban Sardar J. V. Pathakji.	Surat	430—432	..
45	..	Rao Bahadur Ranjit Kalabhai Lalubhai.	Surat	433	..
46	..	Mr. N. S. Lokur, B.A., LL.B.	District and Sessions Judge, Ahmedabad.	434—436	..
47	..	Mr. Morarji R. Desai, B.A.	District Deputy Collector, Godhra.	436—437	..
48	..	Dewan Bahadur Thakorram Kapilram, C.I.E., LL.B.	Vakil, Surat . .	437—440	..
49	..	Mr. N. V. Desai, LL.B.	President, Bar Association, Broach.	440—441	..
50	..	Mr. J. N. Bhatt .	Judge, Small Cause Court, Ahmedabad.	444—445	..
51	M.	Mir Gulam Khwaja alias Chhota Sahib Zulficarni.	Ex Vice-President, Broach Municipality.	445—448	..
52	L. Dr.	Dr. Margaret Mac-Keilar.	Medical Practitioner, Mission Hospital, Neemuch.	448—449	..

No.	—	Names.	Place and Designation.	PAGES.	
				Written Statements.	Oral Evidence.
AHMEDABAD (GUJERAT)— <i>contd.</i>					
53	..	Mr. Nadirshah Nasarwanji Master.	District and Sessions Judge, East Khandedsh, Jalgaon.	449—452	..
54	M.	Mr. Gulam Mohamed Munshi.	Bar-at-Law, Public Prosecutor, Kathiawar Agency.	452—456	..
55	..	Mr. Chhaganlal Prantal Jetli.	Assistant Commissioner, N. D. Ahmedabad.	457—458	..
56	L.	Shrimati Prasannahai .	Wife of Mr. Mulchand Asharam Shah, B.A., LL.B., Advocate, Ahmedabad.	458—459	..
57	..	Mr. B. T. Patel, B.A., LL.B.	Joint Secretary, Bar Association, Godhra.	459—460	..
58	..	Mr. Sakarlal Balabhai	M. L. C., Ahmedabad	461—462	..
59	T.	Mr. Gordhandas I. Patel.	M. L. C., Member, Ahmedabad Municipality, Ahmedabad.	462—465	..
60	M.	Khan Bahadur H. P. Chahewala.	Assistant Government Pleader and Public Prosecutor, Ahmedabad.	465—466	..
61	Dr.	Dr. M. M. Mehta .	Medical Practitioner, Surat.	466—467	..
62	T.	Sardar Ishwardas Jagjiwandas Store .	Surat	467—569	..
63	..	Mr. Chimanlal N. Mehta.	President, Borough Municipality, Nadiad.	469—470	..
64	..	Mr. D. D. Cooper .	District and Sessions Judge, Surat.	470—471	..
65	Dr.	Dr. M. K. Dixit .	M. L. C., Surat . .	471—473	..
66	..	Mr. A. O. Koreishi .	Collector, Broach .	473—474	..
67	..	Mr. Mani Lal K. Desai	Broach	474—478	..
68	Dr.	Dr. Homi S. Dastur .	Medical Practitioner, The Dentiformy Pharmacy, Broach.	478—479	..

No.	—	Names.	Place and Designation.	Pages.	
				Written Statements.	Oral Evidence.
AHMEDABAD (GUJERAT)— <i>concl.</i>					
69	Dr.	Khan Bahadur Dr. B. H. Nanavatty.	Vice-President, Ahmedabad Municipality.	479—481	..
70	..	Mr. Ramrai M. Munshi	General Secretary, The Indian Farmers, Peasants Federation, Ahmedabad.	481—482	..
71	..	Mr. B. C. Sutar	Agent, Batavia Sea and Fire Insurance Co., Ltd., Ahmedabad	482	..
72	..	Mr. G. A. Ghatge	Jaya Rang, Baroda	483—485	..
73	..	Rao Bahadur Bhimbhai Ranchhodji Naik.	President, District Local Board, Surat.	485—486	..
74	..	Mr. Niharlal D. Parikh	Vakil, Godhra	486—489	..
75	..	Mr. Bhimbhai Dayabhai Mehta.	Ahmedabad	489—490	..
76	..	Mr. Natwarlal Umishankar Joshi.	Dakor	490—492	..
77	..	Mr. Nagajindas Purshotamdas Sanghvi.	Secretary, Sanatan Dharm Sabha, Ahmedabad.	492—493	..
78	M.	Sardar Nihar Singhji Ishwar Singhji alias Nasrulla Khan.	Thakore of Amod, Amod.	494	..
79	M.	Khan Sahib Mohammad Ibrahim Makan.	Land-holder, Amod	494—496	..
80	..	Ahmedabad Municipality.	Ahmedabad	496—497	..
81	T.	Mr. Keshavlal Maganlal Trivedi.	Ahmedabad	497—499	..
82	..	Notes on a visit to villages by the Age of Consent Committee.		500—501	..

The following persons were invited to give oral evidence but did not appear:—

KARACHI.

1. Khan Bahadur A. M. I. Umedally, President, District Local Board, Hyderabad.
2. S. Isar Singh, Pleader, President, Sukkur Municipality, Sukkur.
3. Khan Bahadur Pir Bux, C.J.E., President, District Local Board, Sukkur.
4. Khan Bahadur Shah Nawaz Khan Bhutto, Larkana.
5. Seth Sobhraj Chetumal, Karachi.
6. Professor S. N. Pherwani, Sikarpur, Sind.
7. Mr. W. N. Richardson, City Magistrate, Karachi.
8. Dr. Nazareth, M.D., F.R.C.S., Karachi.
9. Dr. Sullivan, Lady Doctor, Karachi.

AHMEDABAD.

1. Dr. M. M. Mehta, L.M.S., Ambaji Road, Surat.
2. Dr. M. K. Dixit, M.L.C., Surat.
3. Dr. Homi S. Dastur, L.R.C.P., Braach.
4. Khan Bahadur Shaikh Ali Bankza, J.P., Bankza House, Surat.
5. Mr. Chandulal Madhavlal Patel, Ahmedabad.
6. Dr. Margaret MacKellar, M.D., Mission Hospital, Neemuch.
7. Dr. Miss N. Proctor Sims, Medical Officer-in-charge, Coronation Memorial Zenana Hospital, Junagadh.
8. Mr. Z. D. Ahmed, District Superintendent of Police, Panch Mahals.
9. Diwan Bahadur T. K. Mehta, LL.B., C.J.E., Bar Association, Surat.
10. Mr. Mohanlal Karamchand Gandhi, Sabarmati Ashram, Ahmedabad.

THE AGE OF CONSENT COMMITTEE.

QUESTIONNAIRE.

NOTE.—The queries below may be answered wholly or in part according to the sphere of experience of each person answering. Persons willing to answer should send their written replies so as to reach the Secretary, Age of Consent Committee, Simla, by the 15th August at the latest.

1. Is there any dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code?

2. What are the circumstances which in your opinion justify—

- (1) retaining the law of the Age of Consent as it is, or
- (2) making an advance on the present law.

3. Are crimes of seduction or rape frequent in your part of the country? Has the amendment of the law made in 1925 raising the Age of Consent to 14 years succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes? If not, what measures would you propose to make the law effective?

4. Has the amendment of 1925 raising the Age of Consent within the marital state to 13 years been effective in protecting unmarried girls against cohabitation with husbands within the prescribed age limit—

- (1) by postponing the consummation of marriage,
- (2) by stimulating public opinion in that direction, or
- (3) by putting off marriage beyond 13.

If not, what steps would you propose to make it effective?

5. What is the usual age at which girls attain puberty in your part of the country? Does this differ in different castes, communities or classes of society?

6. Is cohabitation common in your part of the country among any class or classes of people—

- (1) before puberty,
- (2) soon after puberty,
- (3) before the girl completes 13 years.

Do any of these cases come to court?

7. Do you attribute the practice of the early consummation of marriage before or at puberty, wherever it exists, to religious injunction? If so, what is the authority for and nature of that injunction, and does that authority prescribe any, and what penalty for its breach?

8. Is 'Gaona' or 'Garbhādan' ceremony usually performed in your part of the country? If so, does it coincide with or is it anterior to the consummation of marriage. Is it performed generally after the attainment of puberty and how soon after it?

9. Do you consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage? If not, at what age and how long after puberty may a girl's physical development be considered to be enough to justify such consummation without injury to her own health and that of her progeny?

10. At what age would a girl in India be competent to give an intelligent consent to cohabitation with a due realization of consequences?

11. During your experience, professional or otherwise, have you come across cases in which cohabitation before puberty, or after puberty but before full physical development of a girl resulted in injury to her health or body or prejudicially affected her progeny? If any, give details of age and injury sustained.

12. Do you consider early consummation and early maternity responsible for high maternal and infantile mortality, or for any other results vitally affecting the intellectual or physical progress of the people?

13. Has there been any further development of public opinion in your part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925? If so, is it general or confined only to certain classes?

14. Do women in your part of the country favour early consummation of marriage for their children?

15. Have any difficulties been experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code? What measures would you suggest to remove or minimise these difficulties?

16. Would the difficulty or margin of error in determining the age be materially reduced or minimised if the Age of Consent is raised to 14 years or above?

17. Would you separate extra-marital and marital offences into different offences? If so, what is the nature and amount of maximum punishment you would prescribe for offences of each class?

18. Would you make a difference in the procedure of trials for offences within and without the marital state and if so, what would you suggest in each case?

19. Would you suggest any safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion?

20. Do you consider that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage? Which of the two alternatives would be in consonance with public opinion in your part of the country?

21. Would you prefer to rely on the strengthening of the penal law to secure the object in view or on the progress of social reform by means of education and social propaganda?

EXTRACTS FROM THE INDIAN PENAL CODE.

NOTE.—The bracketted portions are to be omitted from and those in italics are to be added to the original as per Sir Hari Singh Gour's Bill.

SECTION 375.

375. Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under (fourteen) sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

SECTION 376.

376. Punishment for rape.—Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine (unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both).

Section 376-A.

376-A. Whoever has sexual intercourse with his own wife, the wife not being under thirteen years of age and being under
 Illicit married inter- fourteen years of age, shall be punished with im-
 pournent of either description for a term which
 may extend to two years, or with fine, or with both.

Extracts from the Code of Criminal Procedure, 1898, Schedule.

Of Rape.

XLV of 1860 Section.	1	2	Whether the Police may arrest without warrant or not.	3	Whether a warrant or a summons shall ordinarily issue in the first instance.	4	Whether bailable or not.	5	Whether compoundable or not.	6	Punishment under the Indian Penal Code.	7	By what court triable.
		Offence											
	376	Rape— (If the sexual intercourse was by a man with his own wife not being under 12 years of age). If the sexual intercourse was by a man with his own wife being under (12) 13 years of age.	Shall not arrest without warrant).	(Shall not arrest without warrant).	Summons	(Bailable)	Bailable	Not compoundable.	Not compoundable.	(Imprisonment of either description for 2 years, or fine, or both).	Transportation for life, or imprisonment of either description for 10 years and fine.	Do.	Court of Session.
		In any other case	May arrest without warrant.	Warrant	Summons	Not bailable	Bailable	Do.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.		
376-A		Illicit married intercourse by husband with wife not under 13 and under 11 years of age.	Shall not arrest without warrant.										

KARACHI (SIND).

Written Statement, dated the 14th August 1928, of Mr. G. T. HINGO-RANI, M.B.B.S., L.M., F.R.C.S., President, Karachi Hindu Sabha, Karachi.

1. Yes.

2. The Age of Consent should be raised for the reasons that 13 or 14 is not a ripe age for a girl for cohabitation with safety to her person or health. It is positively harmful.

2. (2) The Age of Consent should be raised to 16 in the case of wife to her husband and in all other cases 18, as a girl of 13 or 14 is physically unfit and incapable of understanding the responsibilities of conjugal life.

3. Such cases are not infrequent. The amendment of law made in 1925 has not succeeded in reducing the cases.

The measures suggested are increasing the Age of Consent to 18 in ordinary cases and 16 in the case of husband and wife. The marriage under 16 be penalised. In the former cases more deterrent punishment be inflicted. Average public does not know about this law unless it is penalised.

4. No. Steps as suggested above, i.e., any one breaking the law, be awarded rigorous imprisonment; fine in such cases has no value at all.

5. Age of puberty in the girls of this country is 14 years least; not much difference in different communities.

6. Yes. Cohabitation is common before puberty, soon after puberty as well as before the girl completes 13 years. Such cases very rarely come to court, but such cases are not only numerous among the illiterate but will be found in abundance among the wealthy merchant class. I have come across many such cases in my professional capacity and the physical wrecks these poor girls have become; and strong men having baby wives who become paralytic, consumptive and insane.

7. In the case of ignorant Hindus, such a belief does exist on account of custom, but authority from religious book cannot be cited; on the contrary Hindu religion forbids marriage of girls before 16.

8. No.

9. No. At least two to three years after puberty, a girl's physical development shall be considered to be enough to justify such consummation.

10. Eighteen years is the best period.

11. Yes. Cohabitation between the age of 12 and 16 has resulted in the girl being totally wrecked in constitution; such girls die early from consumption, back and pelvic pains, paralysis of legs, deformities of the pelvis, dislocation of uterus and ulceration of cervix.

12. Certainly, yes.

13. Yes. It is a general public opinion.

14. Yes. Excepting such who are highly educated.

15. The determination of age should be depended upon horoscope, school certificate, and birth and vaccination certificates.

16. From medical point of view, if the Age of Consent is raised to 16 or above, the difficulty in determining the age will be reduced.

17. Distinction must be made between marital and extra-marital offences. Punishment should be deterrent. Existing punishment shall be retained, but if the Age of Consent in the case of husband and wife is raised to 16 years, the punishment in cases when the age of wife exceeds 14 years, shall be limited to heavy fines only but in case of extra-marital offences, rigorous imprisonment not less than twelve months, should be the award.

18. Penal legislation will be the only effective measure. No amount of propaganda by any one will have any effect. Every one will prefer to have penal legislation to root out this evil. *Sati* or the burning of a widow with the dead body of her husband died only by legislation or it would have continued even to-day. The superstition and the force of custom can be effectively grappled by Legislation alone.

19. Nil.

20. Penal legislation fixing the minimum age of marriage will certainly be more effective to minimize the marital offences.

21. Social reform by means of education and propaganda will partly help the object in view, but I prefer strengthening of the Penal Law and unless very effective punishment by way of rigorous imprisonment is not introduced no amount of social propaganda will do any good to the class of people, we have to deal.

**Oral Evidence of Mr. G. T. HINGORANI, M.B.B.S., L.M., F.R.C.S.,
President, Karachi Hindu Sabha, Karachi.**

(Karachi, 29th September 1928.)

Chairman: Besides being the President of the Hindu Sabha, I understand you are a practising doctor. How long have you been practising here?

A. For the last 12 years.

Q. In your professional capacity have you come across all classes of people or only one or two classes like the Hindus or Muhammadans?

A. I come in contact with all classes of people including Jews, Christians and Anglo-Indians. I am a specialist in diseases of women and children and in midwifery. I have attended on more than two thousand cases of delivery.

Q. What do you think is the ordinary marriageable age amongst the Hindus and Muhammadans here?

A. At present it is between 11 and 14.

Q. Do you think there has been an increase in the marriageable age during the last 7 or 8 years?

A. Yes.

Q. Before that?

A. Before that marriages were taking place even at the ages of 4 and 5. But they were exceptional cases. But now partly due to education and partly due to economic conditions, things have changed and the marriageable age is rising.

Q. In para. 6 you say that cohabitation is common before puberty, soon after the puberty as well as before 13 years. Is this within the marital state?

A. Yes; even otherwise also, but they very rarely come to the courts.

Q. Have you come across such cases within the marital state?

A. Yes. Amongst the illiterate classes and amongst the merchant classes there are consummation of marriages taking place even before the attainment of puberty. I have seen the evil effects of such consummation and they are patent to laymen.

Q. Does this practice exist amongst a large number of people who practise early marriage?

A. There are one or two communities in which the number of girls is less than the number of boys and therefore grown-up men marry young wives and ruin the girls' lives for ever. People very often come to me and ask me what they can do to hasten puberty. Sometimes the girls are given codliver-oil for hastening puberty.

Q. How many cases do you think you have to deal with on account of early consummation?

A. About 25 to 30 per cent. of the community in which this evil exists. I exclude the educated classes.

Q. Have you come across any cases of actual injury to the girls?

A. Yes, 2 or 3 cases came to my notice in which there was a tearing of the cervix and the outside parts. In another case there was dislocation of the pelvic bones and neuralgic pain in the system. A couple of girls got insane because of the force. These cases rarely come to our notice because the mother-in-law particularly is anxious about not getting these exposed mainly on account of superstition. Early consummation results generally in the dislocation of the uterine, dislocation of the pelvic bones, weakness of the lower legs and sometimes widening of the legs. In the case of widening of the legs, there is a peculiar gait which shows that injury has been done. In two or three cases the girls lost their mental balance.

Q. How do you know that all these are the result of early consummation?

A. The pelvic part is the most important part in the girls and it is directly connected with the brain. Any injury to this part always affects the mental equilibrium of the girl and she loses balance.

Q. Do you know of cases of hysteria?

A. Hysteria is very common now-a-days.

Q. Do you connect it with early consummation of marriages?

A. On the contrary non-consummation of marriage even after full development is responsible for hysteria.

Q. Do you suggest that the Age of Consent within the marital state should be 16 and outside the marital state 18?

A. Yes.

Q. Do you think that would be strongly objected to by the particular community which is likely to be affected?

A. We are not to look to the objections of any particular community. We ought to look to the health of the girls and the progeny.

Q. But what do you think they will say?

A. Times are changing. I do not think these people if they are properly made to understand the advantages would raise any very serious opposition. Much of the opposition is imaginary.

Q. Do you think that the age of 18, outside marital cases, would help in reducing cases?

A. So far as Sind is concerned there are three evils. One is cattle-lifting. The second is women-lifting and it is common in the villages. The third is the kidnapping of minor girls. People bring girls from Catch and Kathiawar and sell them.

Q. Are they girls below 16?

A. Yes.

A. Yes. About a month ago when I was passing along the Bafra market, I heard the cries of two girls and near them two men were fighting. The girls were being forcibly taken away by two men aged about 22 and 25. We separated the girls and handed them over to the police.

Q. In this case, were the girls really married?

A. There is no question of real marriage in these cases. The men went to a pleader and had a document written with the consent of the women.

to the effect that the marriage had taken place. It is more a sale than a marriage. No actual marriage ceremony is gone through.

Q. What happened to the girls?

A. The guardians of the girls were their uncles and fearing that they would get into trouble they confessed that whole thing and begged pardon. The two men ran away. The girls were handed over to their *Masi*, a near relation.

Q. How would these cases be affected by any law penalising marriages as you suggest?

A. If girls are not married before 16, and if the father of the girl, the father of the boy, the priest or Moulvi connected with marriages under 16 get rigorous imprisonment, it will be effective.

Q. But do they have a marriage ceremony in cases like the one you have cited?

A. Yes, though it is not a regular ceremony they do have some sort of marriage ceremony. I would like to say that in the several cases of rape and kidnapping that take place it is very difficult to find out whether a girl is 13 or 14. Therefore the culprits would have to obtain a medical certificate and plead that the girl is over 14 years. If it is against the girl's consent the chances of ascertaining the age of the girl are much better when she is 18 than when she is 14, and the culprit cannot escape.

Q. It is said that if you keep the girls unmarried after they attain puberty there is a danger of their becoming immoral. What is your opinion?

A. I have fixed the age of marriage of girls at 16 and not at 18. Even according to Manu a girl should have had 36 menstrual courses before she can have consummation.

Mr. Kanhaiya Lal: Where is it laid down?

A. In the *Manu Smriti*, 9th Chapter, 90th verse.

Q. What it says is that the girl has the right to give herself away in marriage after she has attained 36 menstrual courses, and before that the parents should give her in marriage.

Chairman: What do you think of the argument that the girls if they are not married up to a certain age might become immoral and might go astray?

A. I have no fear on that account at all as far as Indian girls are concerned. But the harm is the other way about. It is better to keep girls unmarried till 16 and risk any danger that might be attached to it, than send them to an early grave.

Q. In para. 4 you say that the amendment of 1925 raising the Age of Consent to 13 within the marital state has not been effective. Then you say that any one breaking the law should be awarded rigorous imprisonment. Even now there is imprisonment for 2 years in case the girls are between 12 and 13. Are you then suggesting that the punishment should be more deterrent?

A. If it is two years now it is sufficient.

Q. Would you then raise the age to 16 and leave the punishment as it is?

A. Yes.

Dr. Beadon: You say cohabitation before puberty is common. At what age does consummation take place?

A. It is very common between 10 and 12.

Q. In how many cases approximately have you seen this?

A. I can even now picture to myself about half a dozen cases in the town of Karachi. I had a case day before yesterday. The girl was practically paralytic, and I told the man that you are the cause of this.

Q. What sort of paralysis was that?

A. Nerves got so weak. It was, I think, on account of real injury and dislocation of the bones. There was so much pressure on the pelvis that the uterus got dislocated.

Q. Why is there scarcity of girls? We have been told that when a girl is born she is neglected altogether. It is not actually infanticide. Does that occur here also?

A. I don't think so. In spite of the exorbitant dowry that has to be paid I don't think girls here are neglected so much as to cause death. In fact in those communities of which we are talking and where early marriage is common girls are more welcome than even the boys. There are very few girls. Men cannot get them. It is a question of money.

Q. What sort of insanity do you see generally?

A. It is nerve exhaustion and overstrain, a sort of melancholia.

Q. Are there no children's home here?

A. Unfortunately none.

Mrs. Nehru: Can you give us the names of those communities where you think consummation of marriage takes place before puberty?

A. I am a local man, I am sorry I could not give you the names of the communities.

Q. Are you talking only of Karachi city or of the whole province of Sindh?

A. I have been to Jacobabad, Shikarpur, Hyderabad.

Q. Then, you think, this evil is common throughout the whole of the Sindh Province.

A. In some of the Karachi districts and there are stray cases outside in Karachi Talukas.

Q. In what class of people is the evil most common?

A. That very rich merchant class living in the Districts of Karachi. The evil is existing in certain communities in Bombay also.

Q. What is your reason for suggesting the raising of the Age of Consent to 16 while the condition of affairs at present is so deplorable. Why do you think people have not taken advantage of the existing law?

A. The law was not sufficiently known and besides no actual steps were taken to so enforce it as to bring culprits to book and award deterrent punishment.

Q. What actual steps would you advocate?

A. I would like these dais and nurses to report the age of the mother also when a child is born. In the municipality birth register the age of the mother must also be given, so that we can at a glance see what the age of the mother was when the child was born. They should be punished also if they fail to report. They should at least get 2 years' rigorous imprisonment.

Q. To whom should they report?

A. To the City Magistrate or the Police.

Q. Do you want to make the offence cognizable?

A. I think so.

Q. Do you think our police is trustworthy enough to deal with cases like those?

A. That is another question altogether.

Q. In your opinion then in spite of the police it ought to be made cognizable.

A. It may be cognizable, but I will suggest that doctors, dais, priests and moulvis should also along with the father of the girl and the father of the boy get rigorous imprisonment.

Q. Don't you advocate any other change in proceduro?

A. No.

Q. Why is it that upto 12 years in spite of its being cognizable it was not effective?

A. Because no steps were taken to bring home to the people that this is an offence. Once two or three cases had been brought to the front and some responsible people punished this evil would have stopped.

Q. Besides the reasons you have already mentioned, what do you think are the reasons of such cases not coming to light?

A. If the doctor reports he himself is the sufferer, because all doctors don't do it. He loses his practice. But if it is widely known that it is an offence, just as everybody knows that stealing is an offence then some cases might be brought to light.

Q. You say there has been growth of public opinion in favour of raising the age of marriage. Why don't the people who are in favour of late marriages bring the cases that come to their notice to light and ask others to marry girls late?

A. Well, Indians are most custom-ridden people. You must make the law more widely known.

Q. How by penal legislation alone then can you achieve your object?

A. That is one step. You must give severe punishment in one or two cases, everybody will come out then.

Q. In answer to question No. 12 you say you certainly consider infant mortality to be due to child marriages. Can you tell me how far is it due to child marriage and how far to other causes or is it due to child marriage alone?

A. We cannot pass such a random remark that it is due to child marriage alone. Girls who are married early certainly lose vitality and the couple has a lesser chance of living long than the mature couple. Their children do not survive. Child marriage is a large contributing factor towards infant mortality.

Q. Do you find any expression of public opinion in favour of the raising of the Age of Consent?

A. So far as Sindh is concerned, the educated community especially in Hyderabad and Karachi is automatically increasing the age of marriage. The Provincial Hindu Sabha has passed a resolution in favour of it. The most welcome sign is that the Saraswat Brahmins, a most orthodox community, are in favour of it.

Q. Was the resolution you referred to, in favour of raising the Age of Consent or the age of marriage?

A. Fixing the age of marriage at 16.

Mr. Bhargava: You say early consummation of marriage is responsible for hysteria. How many cases of hysteria, you think, you have treated?

A. It is very difficult to give exact figures. But out of every 15 girls suffering one girl suffers from hysteria. Hysteria is not a positive disease. It is a combination of so many symptoms. When the doctors are not able to diagnose properly they say it is hysteria. When the grown up girls are not properly satisfied, and they are already very sensitive, they get this disease.

Q. What do you think is the average age at which this disease occurs?

A. Usually between 15 and 20.

Q. You say you have got some experience in respect of the sale of some girls here in this country. Are those girls actually married?

A. Those girls are taken to Sindh or Kathiawar. They are mostly minor girls. Some 200 or 300 rupees are taken. A Brahmin is sent for and the marriage is solemnised.

Q. What is the age?

A. 8, 9, 10, 12 or 13.

Q. What caste do they belong to?

A. They belong to a peasant class and the depressed classes, and they are married into the merchant class. Among the Mohammadaus also there is scarcity of girls. Therefore amongst the poorer classes of Mohammadaus the girls are kidnapped. Hindu girls are taken away by the Mohammadaus and the Mohamman girls are taken away by the Hindus.

Q. Is there a document executed?

A. Yes, this usual one rupee stamp or two-rupee stamp.

Q. Do you think that these girls are brought up for some time before they are sold?

A. The girls are generally between 10 and 12. It is a regular business. If a girl is married to one man and he dies she is sold to another man and then to the third man and so on. A girl came to me who had been sold like this four times for different amounts. The girls are generally minor girls. I have seen cases where a girl is eloped and goes to the other man in spite of the fact that her previous husband is living.

Q. Do you think marriage legislation will stop this?

A. A girl of 18 can understand better than a girl of 12 or 13.

Q. Don't you think a girl of 16 or 18 is more to be blamed than the man who seduces her?

A. No. They are very innocent, and by temptation they are forced to lead a life of immorality. They are made to marry a man whom they do not want to marry.

Q. You say there are some cases in which consummation takes place before puberty. What age are the husbands whom the girls marry?

A. Nearly double the age of the girls.

Q. There is no complaint therefore that even boys are married early.

A. No.

Mr. Mudaliyar: Is this Hindu Sabha affiliated with the Hindu Mahasabha?

A. Yes.

Q. You talk of consummation before puberty. Can you tell us what proportion to the whole Hindu population of Karachi will this population be which practices consummation before puberty?

A. In Karachi we have got a Hindu population of about 1 lack and 25 thousands. Out of this about 25 thousands practise this.

Q. I understand this is not any particular class, but various groups. These communities are a certain social order and not a caste.

A. Not a caste.

Q. In answer to question No. 11 you have given us an idea of the cases which have resulted from this early consummation. Can you tell us how many have come under your personal observation?

A. It is very difficult to say. Out of the 15 cases that you receive you remember only, say, 2 bad cases. But there is a sufficient number which calls for legislation. At least in the Hindu community among the cases which come to our notice, in about 15 to 20 per cent. of such cases occur.

Q. With reference to the reporting of these matters, you suggest that nurses and dais should report the birth of the child and give the age of the girl-mother. At present birth registration is done by the parents. Do you think the dais will give the correct age?

A. It will be one of the safeguards.

Q. Do you think it will be a very good safeguard? Is it not a fact that they will report whatever age you want them to report? Can you expect them to make accurate reports?

A. Some of the dais are very competent.

Q. I do not question their competency. It is exactly in these cases that the parents and guardians of the husband would insist on her giving a

wrong age. Do you think it will be very difficult to get the wrong age corroborated by them? There are some noble exceptions, but can you trust them as a class?

A. This is one of the ways to find out the age. This is not the only way.

Mr. Ramaswamy Mudaliyar: Is there any registration of dais?

A. We are going to have it.

Q. Has any policy been laid down?

A. Yes, the municipality are doing it. We want to register all the dais who are in the municipal limits of Karachi and all those who are to undertake this practice will get a certificate.

Q. You say that a large number of cases occur of girl-mothers.

A. Yes, but 90 per cent. of the people do not know.

Q. Even as regards the age of 12?

A. No. The majority of the people do not know that this is a cognizable offence below 12.

Q. If we lay an obligation on the medical men to report such cases do you think it will work?

A. Certainly. Do we not report accidental cases and cases of people who take poison? We are supposed to report all the infectious cases.

Q. Do you not think that the chances of these people going for treatment to a trained medical practitioner will be very much less if the patient realises that the moment she goes to you there is every likelihood of her being reported against? She will be very chary of going to you but will go to a quack doctor.

A. In the case of many girls who set fire to themselves we are called upon although we are supposed to make a report to the police and we do it.

Q. You say vaccination certificates may be a help in determining age. Will you explain now?

A. We are vaccinating children at the age of 6 months and if a child is weak he may get 6 months' extension and when he is supposed to get vaccinated we give the name and other particulars in the register.

Q. Perhaps you enter the age of the child in the vaccination register also?

A. Yes.

Q. You have said that there ought to be a distinction between wives below 14 and from 14 to 16. Below 14 the punishment may be heavier and between 14 and 16 it may be only fine.

A. We ought to move slowly.

Q. What would you put the punishment at below 14?

A. It will prescribe the same that is now for below 12 cases.

Q. Would you put it as transportation?

A. I will put it at 2 years' rigorous imprisonment.

Q. After that you suggest a punishment of a suitable fine?

A. Yes.

Q. You have said that it is much easier to find the age at 18. But the difficulty is about the marginal cases. The marginal cases will continue whether you fix it at 16 or 18. How do you get over that difficulty if you fix it at 18?

A. We will more easily find out the age of a girl when she is 18 years.

Q. You have said that in extra-marital cases the age should be 18 and one of the reasons is that the age is very much easier to be determined by a doctor than 14. A girl may have reached 18 but the prosecution will allege that it is 17 or 17½ years. In such cases age becomes a very strong and determining factor. I want to know if you have any thorough system of fixing age from the knowledge of ossification.

A. That is impossible to say.

Chairman: What is the new X-Ray treatment?

A. We have got certain lines and we know that a certain line appears at a certain age at the extremities of the bones.

Q. By the X-Ray, are you able to ascertain whether the age of the girl is 16 or 17?

A. Yes, any age.

Q. Do the lines get ossified at certain ages from which you can determine the number of years?

A. Yes.

Q. From what age to what age?

A. From 3rd or 4th year we can go on until a man stops growing which is 35.

Q. Then you can determine the age up to 35 years.

A. No, up to 23 or 24 years.

Q. Is that a more certain test?

A. Yes, that is more scientific, more certain and more accurate test.

Mr. Kadri: Several doctors have told us that hysteria in females is due to early consummation but you hold a contrary opinion. In view of the fact that there is early consummation in these parts, and there are also cases of hysteria, do you think you will change your opinion?

A. Hysteria is a general disease or some form of mental shock. Grown-up girls after 18 or 19 if they get hysteria will attribute it either to the consummation of marriage or some mother-in-law's troubles or some sort of quarrel at home though they may be well-to-do and getting plenty to eat and wear.

Q. Is it not possible that hysteria may be due to shock brought about by the early consummation of marriage?

A. Anything that affects the mental system of a girl may bring hysteria whether it may be a shock or injury, physical or mental.

Q. Is the registration of births very satisfactory?

A. Yes, it is done by the municipality.

Q. Is it obligatory on the parents to report births?

A. Yes, otherwise we prosecute them.

Q. Is the system of registration satisfactory in the rural areas?

A. Yes, they have to go to nearest village or taluka to report the birth.

Q. In municipalities, have they got the same staff for registering births and deaths?

A. Yes, but not the same registers.

Q. In the case of birth entries the name of the child is not entered. Is it not so?

A. Yes. The name is not given.

Q. Sometimes if a man has got two or three daughters he can refer to the birth entry of any particular daughter which suits his purpose. Have you got any remedy for that?

A. People cannot manipulate these things.

Q. But one or two years make no difference. The prosecution may say that the girl is below 16 while the father may say that she is above 16.

A. We have got another safeguard; that is the vaccination register.

Q. It has been suggested that we should have an additional column in the birth register and it should be obligatory on the parents to report the name after 3 days?

A. Yes, it will be very good.

Q. Does it not exist already in Sind?

A. No.

Q. Are you in favour of registration of marriages also?

A. What benefit will that do?

Q. In that register the dates of births of the marrying parties can be given and then there may be obligation on the parents to make a correct report and sometimes questions may arise that marriages have taken place according to law or not.

A. It may help us but another difficulty will be whether the people have entered the right age or not while marrying and it will be rather too complicated a machinery.

Q. Parsis have got such a registration and no difficulty is felt. What do you say to that?

A. Parsis are very few and they are an advanced people. It will be a great hardship on the other people.

Q. Registers may be kept in the case of all classes.

A. I think it will be rather complicated a machinery and I do not recommend it.

Mr. Kanhaiya Lal: You have said that consummation is common before puberty. May I know whether it is common among Hindus or Mohamedans?

A. It is prevalent among both; mostly among Hindus and to a lesser degree among Mohamedans.

Q. What is generally the age at which girls are married amongst Hindus?

A. I have said it is different. Educated classes marry at 15, 16 or 17. Now we might find girls of 20 or 21 still unmarried but the average among the lower classes and the illiterate classes is between 9 and 13.

Q. As regards cases of consummation before puberty am I to understand that these cases are common when the husband is a grown-up individual or where there is a great disparity of the ages between the girl-wife and the husband?

A. No, generally the difference is 4 years.

Q. Even then there is a desire to celebrate the marriage. Do you suggest that there is a desire to expedite consummation?

A. Yes.

Q. Even when the boy is 14 would they consummate the marriage?

A. Yes.

Q. Is it due to the fact that mothers-in-law are anxious to have grandchildren?

A. Usually they are superstitious and would like to have the marriage consummated rather than delay it. If they do not, people feel that there is something wrong with the boy. It is not from any desire to have grandchildren but it is due to custom.

Q. You mean that as soon as the girl goes to her husband's house they give deliberate opportunity for consummation?

A. Yes.

Q. Even though puberty may not have been attained?

A. Yes.

Q. You have said that the age of marital consummation may be fixed at 16. Do you think that will be acceptable to the people in Sindh?

A. I should think so.

Q. Will it be acceptable to the orthodox class?

A. Most religious people like Saraswat Brahmins have passed it and there are no men more orthodox than these.

Q. Will it be acceptable to the rural classes?

A. Yes; they already marry late.

Q. Have you got a system of *goana* here?

A. No. There is a system here called *satawarah*. The boy goes to the father-in-law's house. People are feasted there and return the next day.

Q. From that I understand that consummation ceremony is performed at the house of the bride?

A. No, bridegroom's.

Q. The bride is taken to the house of the bridegroom and there the consummation is performed?

A. Yes.

Q. This takes place both among the Hindus and Mohamedans?

A. I cannot say about the Mohamedans but I know that among them consummation generally takes place immediately after the marriage.

Q. Have you any *garbhadan* ceremony in Sind?

A. No.

Q. Even in the case of the *garbhadan* ceremony the Shastras lay down that the husband and the wife must live completely separate for three days and it can be performed on the fourth day whereas you tell us that an opportunity is given for consummation the very next night after marriage?

A. The very night.

Q. In the extra-marital cases would you recommend an age-limit of 18?

A. Yes.

Q. It has been represented to us that if we fix an age as high as 18 there is a danger that unmarried girls might be seduced and the seducers may marry them later so that all chances of further prosecution might thereafter disappear. What is your opinion?

A. I have no fear about Indian girls.

Q. If the girl remains unmarried up to 18, would not the chances increase?

A. I do not think so.

Q. Would there be no cause of hardship to young boys who might fall a prey to temptation if we fix the age so high?

A. That hardship exists always.

Q. Would you be able to control girls in brothels and daughters of prostitutes up to the age of 18?

A. Yes.

Q. Would you recommend a system of issue of a free birth certificate as soon as a birth is reported so that it may remain in the possession of the reporting party?

A. Yes. The only difficulty is that the persons who record these reports are not sufficiently literate. They can only fill in a form and may not be able to issue a proper certificate.

Q. What system would you recommend in order to make the system successful?

A. I would recommend that the report of the birth should only be made when the *namkaran* ceremony has been performed. The name of the child should also be entered and then the certificate should be issued.

Q. You are probably aware that a pet name is given later while the name that is given on the 6th day is very often the astrological name. What would you do in those cases?

A. It is not so in Sind.

Q. Is the name given by the family or by the astrologer?

A. By the astrologer.

Q. And that name is changed.

A. Yes. And even if there is a pet name it is only for the family; for official records the original name remains.

Q. You have said that in order to make the law effective you would recommend that midwives should be required to report cases of infringement.

Would it not be desirable also to have vigilance societies in every town and rural areas to look after these cases and to make reports?

A. Yes, it is good.

Q. Would you make that organisation of a voluntary character or would you suggest that they should be nominated by some district authority in each centre?

A. I think they should be nominated from any semi-Government institution. They will be more responsible than voluntary organisations.

Q. If 5 members are nominated by district authority for each centre, do you think that is likely to be more effective?

A. You can have 3 voluntary and 2 nominated.

Q. Suppose we give that authority to Hindu Sabhas or Arya Samaj or Sanatan Dharm Sabhas. Would that be helpful?

A. I do not think any such institution will be so much respected by all sections of the different communities.

Q. If that power is given to village panchayats?

A. Yes, that will be helpful.

Q. Suppose we have village societies to report these cases, don't you think that there would be a certain amount of sympathy with the husband because the offence is considered to be an offence of a technical character?

A. No, I would not have any sympathy. I think education would make the people stronger than what they are now. I am hopeful that these societies when educated will be more strong and will be a help in the suppression of crime.

Written Statement, dated the 15th August 1928, of Mr. JAMSHED N. R. MEHTA, President, Karachi Municipality.

1. These two sections of the Penal Code seem to be an anomaly on the general trend of legislation on the subject of Consent. The reasons stated for the Age of Consent in fixing the age at 16, in section 363 have been supported by almost all the High Courts of India on the grounds of that being the minimum age at which a girl could be presumed to reach the age of discretion. Moreover, medical opinion has it that the age of puberty varies in India from anything from 11 to 16 years. In the circumstances it is desirable that the age should be uniformly 16.

2. (1—2) Reasons for increasing the Age of Consent are that age of 13 or 14 is not ripe age for a girl for cohabitation with safety to her person or health. It is on the contrary positively harmful. Moreover, a girl at such an early age will not have sufficient education, nor will she have sufficient mental development to understand the consequences of a married life and the responsibilities of motherhood.

3. Such cases are not infrequent. The amendment of law made in 1925 has not succeeded in reducing the cases. The measures suggested are increasing the Age of Consent to 18 in the ordinary cases and 16 in the case of husband and wife. The marriage under 16 should be penalised. In extra-marital cases, more deterrent punishment should be inflicted.

4. To a certain extent. The age of marriage is being gradually raised.
(1—3) Yes.

Steps are suggested as above.

5. The age of puberty in the girls of this country is 14 years. Not much difference in different communities.

6. Yes. Cohabitation is common before puberty, soon after puberty, as well as before the girl completes 13 years.

(1—3) Yes.

Such cases very rarely come to Court.

7. Early consummation of marriage before puberty is general but not warranted by religious sanction. Consummation on attaining puberty is warranted by religious sanction.

8. In some communities such ceremony is performed after pregnancy.

9. No. At least two or three years after the puberty a girl's physical development shall be considered to be enough to justify such consummation.

10. 18 years.

11. Yes. Cohabitation between the age of 12 and 16 has resulted in the girl being totally wrecked in constitution and progeny being unfit for society.

12. Certainly, yes.

13. Yes. It is a general public opinion.

14. Yes. Excepting such as are highly educated.

15. (a) That depends upon the circumstances of each case.

(b) Birth certificates, vaccination certificates combined with horo-scope, will go a very long way to help in determining the age.

16. From the medical point of view if the Age of Consent is raised to over 14 years the difficulty in determining the age will be reduced.

17. Some distinction should be made between extra-marital and marital offence. In cases of extra-marital offences punishment should be more deterrent than what it is now, but if the Age of Consent in the case of husband and wife is raised to 16 years, the punishment in cases when the age of wife exceeds 14 years should be limited to heavy fines only. In other cases the punishment should remain the same.

18. Existing difference in procedure should be retained.

19. Nil.

20. Legislation fixing the minimum age of marriage will certainly be more effective to minimise marital offences.

21. Social Reforms by means of education and propaganda will serve the object in view, coupled with the Penal Laws.

Oral Evidence of Mr. JAMSHED N. R. MEHTA, President of the Karachi Municipality, Karachi.

(Karachi, 29th September 1928.)

Chairman: How long have you been President of the Karachi Municipality?

A. Five years.

Q. In the course of your work do you come into contact with Hindus as well as Muhammadans?

A. Yes, I come generally in contact with all communities.

Q. In para. 6 you say that cohabitation is common before puberty, soon after puberty as well as before the girl completes 13 years. Do you think it is common amongst any particular class of people only or villages or towns only?

A. Amongst particular classes of Hindus it is very common. It is common amongst Gujaratis, especially amongst the Kutehis and Lohannas. They belong to Kuteh and Kathiawar. It is also common amongst Sindhis of the old type.

Q. What proportion do you think of the entire population these classes would come to?

A. I won't be surprised if it is one-third of the population in Karachi.

Q. Can you tell us why these cases have not come to court?

A. Because nobody is vigilant about it.

Q. Do you think it is because these cases are non-cognisable?

A. I cannot say about other parts of India, but here nobody seems to have thought about it.

Q. You have said that fixing a minimum age for marriage will be more effective in minimising marital offences. Why do you think so?

A. The Age of Consent cannot be understood except by those who are educated, especially is it the case in the rural areas. But if you fix a limit for marriage everybody will understand it and consummation goes generally with the marriage. Therefore fixing an age for marriage would be much better.

Q. Would you put the age of marriage of a girl to begin with at 16?

A. I would personally have it at 18. 16 would be a matter of compromise.

Q. What do you think of Sarda's proposition about fixing the ages at 14 for girls and 18 for boys?

A. I do not think it is enough.

Q. Do you think that there is any danger if girls are kept unmarried till 16 or 18? Do you think the girls might be led astray?

A. Why should you make a difference between girls and boys? Of course, there would be a little bit of danger taking into consideration human passions. But fixing the age would be much more safe.

Q. Outside the marital state, what is the limit you want?

A. I have said 18 outside and 16 inside the marital state, but I would have 18 in both cases.

Mrs. O'Brien Beadon: In para. 6 you say that cohabitation is common before puberty. At what age of the girls is it common?

A. Between 11 and 13.

Q. Will there be 10 or 12 cases a year?

A. Possibly more. I have myself known 10 or 12. There might be many more which I do not know.

Q. In para. 11 you say that cohabitation between the age of 12 and 16 has resulted in the girl being totally wrecked in constitution and progeny being unfit for society. Can you give us any cases from your own personal knowledge?

A. In my own community I know of at least 10 cases.

Q. Will you give us details? When were the girls married?

A. The girls were married at the age of 14 or 15.

Q. What happened?

A. In two or three instances they got children also.

Q. Were the children weaklings?

A. Yes, the first children were always weaklings. Not only that, one of the girls was absolutely ruined. I know the poor girl has been laid up for the last 10 years in bed. Her husband is about 12 years older than she is, and because the girl was tender-aged she is practically sick now and almost paralysed.

Q. Was it after the first child?

A. Yes.

Q. Was she healthy when she was married?

A. Yes, she was quite healthy.

Q. When did the marriage take place?

A. The marriage took place some 10 years back when the girl was 14. The girl is now about 24 or 25.

Q. Do you think that the children of such mothers are affected also? Does it affect the mental and intellectual growth of the children?

A. I have seen some cases where the children are strong and some cases where the children are weak.

Q. What will be their proportion to each other?

A. They are about equal.

Q. We have been told that if we fix a marriage age it would be a hardship in this way. Supposing there is a sick man and he wants to marry his daughter before he dies, he would be unable to do so if the girl is under the age fixed. It will then be a hardship on the girl if he dies, for she will then be without protection. Do you think that such cases are sufficiently common to be brought under notice?

A. Such cases are very few; but it is better to leave the girl to suffer that way for the suffering will be very much less than what she will have to undergo if she is married early.

Q. Among Hindus is consummation of marriage earlier?

A. Yes.

Q. Among the Muhammadans?

A. There is not so much of early consummation among Muhammadans.

Mrs. *Bibi Lal Nohu*: You say that the law is ineffective because people are not vigilant. What is the reason for people not being vigilant?

A. The reason is this. Because of this Committee some of us have known it, and it is because of this Committee I personally have known something more about it. Otherwise people are not much vigilant.

Q. Do you think that the law if it is sufficiently made known, in spite of its provisions being the same will be more effective?

A. Yes. If once people know that there is such a law, there are associations and people who are taking an interest in public life who will take action and bring such cases to light.

Q. Do you think that people are sufficiently advanced to take them up?

A. Yes, in every province there are sufficient number of them.

Q. If social reform associations are given the power to report, will they take it up?

A. Yes, certainly.

Q. What do you think is the proportion of people who have early consummation?

A. I cannot give you the exact proportion, but it is the general custom amongst Gujaratis. With them custom is a terrible thing.

Q. Do they attribute it to custom or to religion?

A. They mix up the two. In the Gujarati households it is the grandfathers and grandmothers that make such things a matter of religion. But that may be a mistake or misunderstanding.

Q. Do you think any special safeguards are necessary to protect the people from being molested if this right is given to social reform organisations?

A. Let that hardship be there for some time; it does not matter. I wish that people are molested.

Q. If the age is raised to 16, do you think there will be much opposition?

A. At least in Sind I do not expect much opposition.

Q. Do you say that in spite of the fact that early marriage is so much practised here?

A. I do not expect much opposition from Sindhis proper. I expect some opposition from others.

Q. Then you seem to think that people will submit to it without much opposition?

A. It is a matter of one or two years. They will then submit to it. Even now the present generation admits the evil effects of early marriage but they dare not face the opposition of their grandfathers and grandmothers. There

are several friends of mine who are quite willing to marry their children at a late age but they dare not face the opposition of their elders in the family.

Q. Do you think that this law will help them?

A. Yes.

Q. You are in favour of punishment being deterrent. The present punishment is 10 years' rigorous imprisonment. Do you think it should be more?

A. 10 years is sufficient.

Q. In para. 4 you say that on account of this law marriages and consummation of marriages have been postponed to a certain extent. Can you tell us how this law has had effect?

A. I must admit that to a certain extent it is an exaggeration. The fact is that the replies were sent by me as President of the Municipality and not in my individual capacity. My personal opinion is that people do not know much about it.

Q. Has the amendment of 1925 been effective in preventing cohabitation before 13?

A. In Sind the amendment of 1925 raising the Age of Consent to 13 was hardly known.

Q. Would you rather limit the punishment in the cases of offences on girls between 14 and 16 to fines only?

A. I would make the punishment sufficiently exemplary. The punishment would depend upon the merits of each case.

Mr. Bhargava: What is the marriage age in the rural areas in Sind?

A. Among Hindus it is between 12 and 14. Among Mussalmans it is 14 to 20.

Q. What is it among the depressed classes?

A. Between 12 and 14.

Q. When does the consummation take place in the rural areas?

A. Immediately after marriage; sometimes almost the very day.

Q. Have you lived in the villages?

A. No; but I have had sufficient touch.

Q. So far as these Gujaratis are concerned, has there been any improvement of late?

A. There has been no improvement. They usually perform these marriages in the villages where the influence of the elders is predominantly in favour of early marriage.

Q. But you said that even amongst these Gujaratis their consciousness has awakened to the evils. If it is so, why does the custom continue?

A. There is consciousness but they have not the courage to face opposition of their elders.

Q. Do you make no difference between boys and girls so far as the age of marriage is concerned?

A. No.

Q. Are you aware of the fact that the Hindu Shastras go so far as 16 in the case of the marriage of girls and not 18?

A. I have studied the Hindu Shastras. According to me they are a big science. The Shastras lay down conditions not only with regard to the age but say that certain other conditions of the body are essential, and each girl and boy is expected to fulfil those conditions before they can marry. So the age is not the only material point. According to the Shastras a girl can be married 3 years after puberty, but there are other conditions also.

Q. According to Hindu Law the age of majority of a girl is 16 and according to the Muhammadan marriage law it is also 16. Knowing this, would you still say that the Age of Consent should be more than 16?

A. As a compromise I will have it at 16, but my personal opinion is that it should be 18. I am sufficiently in touch with girls at 16 and I am positively certain that these girls would have given their consent even if they knew the difference.

Q. Do you put the age from the health point of view?

A. Yes, I put everything from the health point of view.

Q. Supposing doctors say that at 16 a girl is fit for cohabitation, will you then change your opinion?

A. I would not change my experience even if a doctor said that.

Q. Why do you then make a difference between 16 and 18?

A. I am making no difference but only a compromise.

Q. In para. 7 you say that early consummation is not warranted by religious sanction. What is your authority for that? Do you rely on Manu alone?

A. I do not rely on Manu alone. My authority is that consummation should not take place before 3 years after puberty. There are certain other conditions also to be fulfilled.

Mr. Bhargava: You say consummation on attaining puberty is warranted by religious sanction. You do not mean that it is obligatory.

A. No.

Q. In answer to question No. 11 you say cohabitation between the age of 12 and 16 has resulted in the girl being totally wrecked in constitution and progeny being unfit for society. You say between 12 and 16. Do you still adhere to that?

A. I am in touch with several maternity homes. From my early days, ever since I left the college, it has become my hobby.

Q. With how many of them are you connected?

A. About 5 or 6. I am the secretary of one. I have got complete statistics with me. I have taken a good deal of interest in this work. I would put the age from 12 to 18.

Q. Have you come across a case over the age of 16 in which there has been total wrecking of the constitution on account of cohabitation?

A. There are many other causes also, but I do not remember any such case at the present moment.

Q. In answer to question 15 you say, birth certificates, vaccination certificates combined with horoscopes will go a very long way to help in determining the age. What is the system of birth registration in Sindh barring municipalities in rural areas?

A. There is no system at all. It is very very vague. Except in the municipalities there is no regular or organised system. Nobody vigilantly follows the rules.

Q. What about the vaccination certificates in the rural areas?

A. Nobody cares for these certificates. Horoscopes are also not kept by rural area Hindus. This answer relates only to Karachi and Shikarpur.

Q. What is the system of giving vaccination certificates in this city?

A. They take about 4 annas and give a receipt. There is no regular certificate.

Q. For how long are the registers kept?

A. 6 or 7 years.

Q. Can people get certified copies of entries from this register?

A. If they ask for it. Suppose vaccination takes place to-day, then after 6 or 7 years even we can give a copy.

Q. So far as the finding out of the age from the birth register is concerned are you satisfied with the present arrangement?

A. No.

Q. What modifications would you suggest?

A. It is difficult to find out a system unless a good amount of money can be found. It will be a costly affair. It would be very difficult for the rural areas.

Q. In view of the fact that you have raised the age to 18, don't you think fine will be no punishment in cases where the constitution has been wrecked?

A. I would like the punishment to be exemplary. Imprisonment will be absolutely necessary.

Mr. Mudaliyar: May I know whether this memorandum was considered by the Municipal Corporation?

A. I sent the questionnaire to the Health Committee and the Managing Committee. They considered it and prepared the answers and I forwarded those answers to you.

Q. Then it does represent the views of several members of the corporation.

A. It is the view of the 16 members out of a total of 54. They were unanimous.

Q. You were speaking about maternity homes. By whom are they run?

A. Three are run by the corporation and the other three by other bodies.

Q. Are they child welfare centres or maternity homes?

A. Maternity homes.

Q. You referred to some statistics which you could produce. What is the nature of the statistics?

A. It gives the age of the mother, the condition of the child, the weight of the child and such other things. It is for about 10 years. (The witness promised to supply this statistics to the Committee.)

Q. You said something about the first wife, the second wife and the third wife. Is it in the case of widowers?

A. Yes.

Q. Have you, in your experience, come across a marital case coming to court?

A. I don't remember.

Q. You have said that fixing the age of marriage by law alone would do.

A. I have said that the people would know it more easily and better. I do want the Age of Consent also.

Q. You have said that some deterrent punishment should be given in these cases. Is it your view that sufficient punishment is not now inflicted by courts?

A. No.

Mr. Kadri: Besides maternity homes are there any other public institutions with which you are connected?

A. There are many, social welfare societies, health associations, blind schools with which I am connected. I am almost in touch with every public institution.

Q. Are you connected with the Zoroastrian Association also?

A. Yes

Q. Do you think there will be any opposition on the part of the Parsees?

A. No.

Q. We have heard that the Parsi Association in Bombay is very much against this measure. Is this true?

A. I will tell you what it is. The Parsi community is very much averse to their girls being married in another community. They have got their own Parsi Act. They want to safeguard that. Rightly or wrongly they are afraid that by this legislation something may creep in into their Act. This is the whole fear.

Q. What way can that be?

A. That is their fear. They are very much afraid of any registration, etc. If they oppose this measure, it would come to me as a surprise.

Q. You say the system of birth registration is not satisfactory. Can you suggest any method of making it satisfactory?

A. Issue instructions to the Mukhtiarkars, collectors, and others who are in charge of it. Village Panchayats where they exist should be asked to carry it out. In villages you can give this work to the postmaster or the school teacher. In every village there is a school now.

Q. In the municipal area of Karachi are the names of the children mentioned in the register of birth?

A. No.

Q. Would there be any difficulty in enforcing the rule that the names should also be given in the register?

A. But no names are given immediately on birth.

Q. Can you make it obligatory on the parents to give the name after 10 days to the registering authority?

A. Yes.

Mr. Kanhaiya Lal: Is there any scarcity of women in Sind?

A. Not that I have heard of. That may be in some communities.

Q. You have said that consummation before puberty is common.

A. That is among outsiders who have come and settled in Sind and not among the original Sind population.

Q. Is it due to disparity of age or because on account of poverty they cannot keep the girl for a long period and send her immediately to the house of the husband?

A. They have got a strong belief that if they do not marry before puberty it will be a sin.

Q. Is seduction of girls common in this part of the country?

A. It is common.

Q. Are the girls taken away to other provinces?

A. In some cases it may be.

Q. Do you think if the Age of Consent is raised to 18 in extra-marital cases, seduction will be checked?

A. Seduction would neither be helped nor checked.

Q. Can you tell us how long birth registers are kept?

A. I could not say, but it is for a pretty long time.

Q. Would you be in favour of certificates being issued by the registering authority to the reporting individual giving the date, place and name of the child and the name of the mother and father and other particulars? That will preserve evidence in case the registers are not permanently kept.

A. That can be done. That will be helpful in so far as it will be an evidence.

Q. Would you like to have a system of registration of marriages?

A. Yes.

Q. Who should be the registering authority?

A. Any Government Judicial official or the head of the village panchayat.

Q. Have you got statutory panchayats here?

A. No.

Q. Then would you recommend the Tahsildar or Deputy Commissioner for this work?

A. Any other department besides the Police can do that. I have no objection to a Tahsildar being given that right.

Q. Would you place the obligation to on the parents or guardians of the couple or on the priest?

A. Parents or guardians and not the priest.

Q. Would you also require a certificate to be issued by the registering authority giving the necessary particulars?

A. If it is issued so much the better.

Written Statement, dated the 24th August 1928, of Rao Bahadur Dr. P. T. KOTHARY, L.M. & S., F.C.P.S., B.M.S., Civil Surgeon, Sukkur.

2. (2) An advance on the present law is necessary on account of the effects of early marriage on (a) physical and mental condition of girls, poor development and weak progeny; (b) insanity, hysteria, osteo-malacia and various other diseases; (c) bad effects on Society and demoralization.

5. Girls attain puberty between 14 and 16 generally. Yes, it differs in different communities. Girls in labouring classes in villages get menstruation at a later age than girls of well-to-do people in urban districts.

6. (1) No.

(2) Ycs.

(3) No.

9. I don't consider that attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage, just as eruption of teeth in a child is not an indication of feeding it with all sorts of solid food. One has to commence carefully and gradually increase it. Similarly simply because menstruation has commenced, there is no justification in consummation of marriage. There must be a full physical development as that is necessary to withstand the strain of pregnancy and child-birth. This cannot be reached before the age of 16 years, viz., nearly two years after puberty and that age is therefore a proper age for justification of consummation without injury to her health and her progeny.

10. Age of 16.

11. Many cases have been met with. Girls marrying at 13 and being consummated have been seen to suffer from phthisis, osteo-malacia, pernicious anaemia, hysteria, insanity, premature senility and early death. The progeny of such unions is weak, emaciated, and unable to resist the onslaught of diseases and eventually the duration of life is short.

12. Yes.

15. The only possible test for determining age at present available in ordinary places is based on teeth. Height and weight differ so much in different persons that it would be risky to compute the age from these tests. X-Ray examination of bones is an additional weapon in this armamentarium and would facilitate the test of age if it can be available.

16. Yes, if it is raised to 16.

21. I would rely on the strengthening of the penal law to secure the object in the conservative and religiously ridden people of India where social reform hardly makes a headway. The abolition of Sati by law is a point in instance.

Oral Evidence of Rao Bahadur P. T. KOTHARI, Civil Surgeon, Sukkur.

(Karachi, 30th September 1928.)

Dr. Beadon: You are Civil Surgeon at Sukkur?

A. Yes.

Q. How long have you been civil surgeon?

A. At Sukkur I have been 15 months. I was at Rajkot for 14 years as Assistant to the Regency Surgeon. After that I was for 5 or 6 years Chief Medical Officer, Junagad State. On reversion to Government service I was posted to Larkana as Civil Surgeon from where I went to Europe for 8 months on leave.

Q. Are you coming in contact with both Hindus and Mohamedans?

A. Yes, as a doctor I come in contact with all the people.

Q. Do you think there is some special dissatisfaction with the present law among the ordinary people or do you think that the law is not effective?

A. Among the ordinary people there cannot be said to be any dissatisfaction but among the educated classes who can think for themselves there is dissatisfaction with the present law and an advance is necessary.

Q. Among the ordinary people there is no dissatisfaction. Is it because they do not know the law?

A. Yes.

Q. Are crimes of rape, abduction and seduction common in this part of the country?

A. Yes, it is fairly common.

Q. Would you say it is very common in Sukkur?

A. I think it is more common in Sukkur than in Gujerat.

Q. We were told yesterday that a good deal of sale of minors of certain ages is common? Is it a fact?

A. Yes in the bania class of Sind there is a paucity of women and they always bring them from Gujerat and Marwar and sell the girls.

Q. Are those girls minor?

A. Yes very minor. Sometimes I have seen girls of the ages of 8 or 9.

Q. Are they sold to marry?

A. Yes.

Q. And if they are 8 or 9 years old, does consummation takes place immediately?

A. Yes, I have seen this in some cases. It is very common at 11 or 12.

Q. You said there is paucity of women. What is the cause of it?

A. I cannot say what is the cause of the paucity of women in Sind.

Q. Have you found in your practice that they do not take any trouble about them?

A. Yes, there is a general opinion that daughters may not grow because of the difficulty of settling them in life. Of course there is no infanticide now as it used to be but no doubt they neglect the girls.

Q. There is a sale of minors. Who sells them?

A. Father or the people who steal them away. The parents also sell them in some cases but generally it is due to fraud. If there is a *koli* girl some people combine and they say it is a Brahman or Bania girl and they get money for that.

Q. So there is no direct sale of the children by the parents.

A. No.

Q. Do these cases come to court?

A. Yes, they do. Now a days there are so many cases coming to court and they are sent to the civil surgeon for determining the age.

Q. Do you find it is easy to determine the age?

A. I think it is very difficult.

Q. Can you make any suggestion?

A. I said in my written reply that we have got three things on which to base the age of any person, viz., height, weight and ossification by X-Ray but the only thing which we are guided by is teeth but then according to the tables it is never to be relied on. It is to a certain extent a guide for X-Ray.

Q. Can you make any suggestion regarding the birth registers which may be helpful?

A. Births are registered in the municipal areas.

Q. Is it satisfactory?

A. People do not come to the municipal areas for the sake of birth registration. Parents are supposed to register the births of their children.

Q. Do you think if there is a penalty prescribed for making a report it will work?

A. If there is a punishment it will be better. There should be compulsory registration and some punishment provided for its neglect.

Q. What fine do you suggest?

A. A small fine of a rupee or two.

Q. When is the naming ceremony performed in your part?

A. On the 8th day.

Q. Would it be possible to register the birth and name of the child on the 8th day together?

A. I cannot say whether everybody goes to the registration office on the same day. Sometimes people go after a month or so because it is not compulsory and everybody goes according to his own convenience.

Q. Will it be possible for the municipality to enforce it?

A. Yes.

Q. Do you think it will be any help to have it corroborated from the vaccination register?

A. We keep the vaccination registers.

Q. Do you enter the names and ages of children vaccinated?

A. Yes.

Q. Would that not be a sort of double check?

A. Yes.

Q. Are these registers carefully kept?

A. That depends on the vaccinator. He goes to the municipal office where birth registers are kept and takes a list from the municipal clerk. He then goes to certain areas to see the children. Primarily he has to depend on the register kept in the municipal office.

Q. Does he go and report that he has vaccinated a certain child?

A. He is supposed to make a report and record it.

Q. You tell us that you have seen early consummation taking place at about 9 or 10 years. Have you in your own experience come across any cases in which injury has resulted?

A. Yes I have seen cases.

Q. Have you seen a case in which definite injury occurred as a result of early consummation?

A. There is no immediate definite injury.

Q. Some people have told us that they have seen that haemorrhage has occurred?

A. Such cases do not come to the notice of doctors ordinarily except in the case of rape but it must be common in early consummation. These are rare cases.

Q. Were these cases marital?

A. No. extra-marital.

Q. You say that you met with many cases in which girls married at 13 are suffering from phthisis. Could you give us details of one or two cases?

A. I know of so many cases that I do not know how to give definite instances. Of course I met with cases where girls married very early and developed phthisis at the age of 15 or 16.

Q. Do you know it is due to early consummation?

A. Yes, because a girl gives birth to a child at 14 and her vitality is so lowered that she falls a prey to tuberculosis.

Q. Do you think a woman or a girl who is married so early has her vitality sapped by maternity more than the woman who is married at 18?

A. Yes. A girl who is married early has her vitality sapped more than the girl who is married late. I am certain about it.

Q. Were these girls who developed phthisis in a reasonably good position so that they could get good food?

A. Yes they belonged to a good family.

Q. We have been told that osteo-malacia occurs in such cases. Have you seen cases of it?

A. I have seen fairly good cases of osteo-malacia in girls who married early and gave birth to children.

Q. At what age have you noticed it?

A. At the age of 15 or 16.

Q. Have you seen any cases before marriage?

A. No.

Q. Would you say that there is some connection between early pregnancy and osteo-malacia?

A. Yes that is my opinion.

Q. You have referred to hysteria and insanity. What form of insanity have you noticed?

A. Melancholia.

Q. In girls who were married early?

A. Yes, there may be some. There are different conditions and I cannot say definitely whether it is due to early marriage but it is a coincidence.

Q. Of what ages were they?

A. Their ages vary from 16 to 20.

Q. Do girls get melancholia at that age?

A. I would not expect melancholia at that age unless there is some death or shock.

Q. Would you say that these cases of melancholia occurred as a result of early marriage?

A. Yes.

Q. Have you seen it among children of young mothers?

A. Yes.

Q. How many have you seen all told?

A. Many.

Q. Were those children weaklings, 5 per cent. or 10 per cent. of them?

A. To my mind it must be at least 15 per cent. All these children of young mothers are weaklings, they are puny and emaciated without vital resistance.

Q. Do you find sterility among these young mothers after one or two children?

A. No.

Q. Do you think that the children born later as the mother grows older are stronger than those born when she is young?

A. Yes.

Mrs. Brijlal Nehru: You have said that consummation before puberty takes place in Sind. Do you think it is common?

A. I do not know much about Sind but it is not common in Kathiawar where I was for a long time.

Q. Have you heard of or dealt with any cases of this sort?

A. No.

Q. Do different communities in Sind differ in their ideas as regards marriage of their children?

A. Yes but now a days the educated classes are forward in these matters and marry their daughters late. The uneducated classes marry at a very early age say at 12 or 13.

Q. Do they not marry before that?

A. Not before 11 or 12. I do not know much about Sind. I have seen cases of girls marrying at 8 or 9 in Kathiawar.

Q. Which places in Sind is your experience limited to?

A. I was at Larkana and now I am at Sukkur.

Mrs. Beadon: Is there much venereal disease in Sind?

A. Yes it is very common in Sind. It was also common in Kathiawar.

Q. Syphilis or gonorrhoea?

A. There is more gonorrhoea.

Mrs. Brijlal Nehru: Are hospitals in these places provided with X-Ray?

A. No; in Sind it is only in Karachi and Hyderabad.

Q. Have you heard of any cases brought to courts especially within the marital connections?

A. Yes, I know the cases of two husbands in Sind.

Q. Do you remember any details of those cases?

A. No, I cannot say about marital cases; perhaps these were extra-marital.

Q. Do you think generally this age of consent law is known in Sind?

A. No, people are very ignorant.

Q. Then naturally it cannot have any effect on the people?

A. No.

Q. When you advocate the advancement of the age do you think, in the present circumstances according to the law as it exists now, it will be effective?

A. It will be very effective.

Q. Why is it that it has not been effective so far?

A. Nobody knew of the law.

Q. If no other alterations are made, even then you think mere advancement of the age of consent will be effective?

A. It will avoid all bad effects of early consummation.

Q. Do you think it is because the punishment is very high that these cases are not brought to light?

A. I think it might be.

Q. If the punishment is lightened do you think it will serve the purpose better?

A. Yes.

Mr. Ramaswami Mudaliar: Is cohabitation common before puberty?

A. Cohabitation is not common before puberty and it is not common before the girl completes 13 years.

Q. In answer to question No. 6 you have said "yes". I understand from your answer that there are many cases of cohabitation before puberty?

A. I must have been mistaken if I gave that reply

Q. I do not think in your part of the country you meet such cases?

A. In Kathiawar among the lower classes it is very common to see girls married very early but there is no consummation before puberty. In Kathiawar all girls are married after 10 or 11 years no matter how old they may be.

Q. Is that a special custom?

A. Yes.

Chairman: Is there any particular year of the Hindu cycle when they marry all these girls irrespective of their ages?

A. They consult the Brahmins and find out the year. Every 12th year comes a cycle when all the girls must be married.

Mrs. Brijlal Nehru: According to the custom is the girl sent to her husband's house immediately after marriage?

A. No, after she attains puberty she is sent to her father-in-law's house.

Mr. Mudaliyar: You were talking of melancholia. You are not suggesting that it is due to early consummation? It will be due to other causes?

A. Yes.

Q. It is not necessarily due to early consummation. It may be due to social conditions due to early marriage?

A. Yes.

Q. We were told that hysteria is also the result of not being married, or unhappy marriages?

A. Yes.

Q. About osteo-malacia. Have you noticed these cases in girls of 18 or 19?

A. I have seen it between 15 and 20. It can occur at any other time but generally it is due to early marriages when there is some change in the bones of the system.

Q. We have been told that once early marriage and early consummation take place every child that is born as a result of that early consummation whatever the age of the mother, is bound to be or generally is a weakling. Is that your experience?

A. No, as the mother grows up she takes up strength and the later born are stronger.

Q. You have suggested 18 as the age. Don't you think there is danger to the morality of the girls?

A. I think in course of time the morality question will be out of the question.

Q. Knowing the social conditions under which girls live whether they are Hindus or Muhammadans would you not suggest that there is danger of immorality.

A. I do not know; but one or two years national movement will increase the morality.

Q. Do you think there would be much public opposition if the age were fixed at 16?

A. Yes, from the orthodox people.

Q. What is the proportion of the orthodox people to the whole?

A. I cannot say but a large section of the people will oppose it.

Q. In what way? Will that be a religious opposition?

A. Yes.

Q. What would it result in?

A. They would hold protest meetings.

Mr. Kadri: We have got two kinds of legislation, one marriage legislation fixing a minimum age for marriage and the other for raising the age of consent. Which of these two would you prefer?

A. I would prefer marriage legislation.

Q. Would you put down the minimum age of marriage at 16?

A. Yes.

Q. Do you not think it will be possible to support this marriage legislation by raising the age of consent?

A. I think it will be better to penalise child marriages.

Q. Would you say that if a girl is to be married at 16, the age of consent should be only 13?

A. No, that is inconsistent; it must be increased. Both should be on a par.

Q. Now there is the question of ultra marriage relations. What limit would you fix for that? What is the age at which a girl is able to give an intelligent consent with a full realisation of the consequences of her act?

A. I would fix it at 16.

Q. Some people have said raise it to 18 because a girl will be minor till then?

A. I think it would be better if it is fixed at 16.

Q. You do not think the opinion expressed before us by a doctor that in many cases hysteria was due to non-consummation, or, absence of connection with the girl, is correct?

A. I do not think so.

Q. Some of the witness have told us that unwillingness of the parties to complain in this matter is due to the fact that they do not want to bring their private and domestic matters to court.

A. That might be true to a certain extent.

Q. So you do not think the lowering of the punishment will be effective?

A. No.

Q. Can you make any other suggestion to make the law more effective?

A. No, I cannot suggest anything.

Q. Would propaganda work help?

A. I do not think so.

Mr Kanhaiya Lal: How long have you been practising the medical profession?

A. For 25 years.

Q. How long in Sind?

A. About 18 months in Sukkur and about a year in Larkana.

Q. You have referred to cases of consummation before puberty; is that among the people who have come from outside and settled in Sind, or is it among the original Sind population?

A. No people have come from outside, it is among the local Sind population.

Q. We were told that it is common among the people who have come from outside and have settled here?

A. I think there are very few who have settled here except in Karachi. In Sind the majority of the population is Sindhi.

Q. If you have a law fixing the age of consent at 16, would it be popular or generally accepted by the local population?

A. There will be some opposition but I think that so far as the Amils are concerned they have already late marriages.

Q. Is that now-a-days?

A. It has been so during the last 10 years.

Q. Could you tell us about the death rate among the females as compared with the males?

A. I am sorry I cannot say.

Q. We were told in Peshawar that between the ages of 10 to 15 and 15 to 20 the mortality among the females was double of that among the males. Can you send us the figures for Sukkur?

A. Yes. I am President of the Sanitary Committee of the Municipality and I will send you the figures.

Q. Supposing the percentage of deaths among females between 15 and 20 is double that of males, could you suggest any reason for this extraordinary difference?

A. Yes, early consummation of marriage, insanitary conditions, at the time of child birth. Tuberculosis is another cause; but mostly due to bad conditions at the time of child birth.

Q. Is tuberculosis very much prevalent in Sind?

A. In Sind in particular it is not so common but in Kathiawar it is very common.

Q. Can you suggest any measures to make the age of consent law more effective? What do you think of vigilance societies, if they are started in towns and rural centres, to watch these cases and report them to the proper authority?

A. It is a good idea.

Q. Will it be effective or not?

A. There is not that public spirit.

Q. Do you think we shall be able to find men for these vigilance societies who would take an active interest?

A. Yes, in urban areas you will be able to find them but I cannot say about the villages.

Q. Would you give them both educative work and vigilance work?

A. Yes.

Q. Would you make them voluntary organisations?

A. Yes.

Q. And not organisations constituted by district authorities?

A. I do not think it is possible.

Q. Would medical men and women be willing to report cases which are brought to their notice of the infringement of the law to the proper authority?

A. Certainly they will be very willing.

Q. Even at the risk of unpopularity?

A. I suppose so.

Oral Evidence of Dr. R. V. SHIVESHWARKAR, Assistant Director of Public Health, Sind.

(Karachi, 1st October 1928.)

Chairman: Are you the Assistant Director of Public Health for Sind?

A. Yes.

Q. How long have you been Assistant Director?

A. 5 years and 6 months.

Q. Can you tell us what is the system of registration that is adopted both in towns and in the villages?

A. In the towns it is done by the municipalities. In Sind there are 27 towns which have municipalities. These have registration of births and deaths. Deaths should be reported within 12 hours of the occurrence and births within 7 or 8 days. There is a penalty also attached to omissions.

Q. Who makes the report?

A. In the case of births the parents or guardian or the occupier of the house. It is an obligation imposed on the householder.

Q. Are the Doctors required to report?

A. The doctor is not required to report. The obligation is only laid on the parents or guardians or the householder. If the report is not made within the prescribed period the man responsible is liable to be prosecuted by the municipality. But such prosecutions rarely take place.

Q. Do you get correct information?

A. There are some defaulting municipalities here who are very deficient in this respect. There is a peculiarity in this. The Vaccination Department is under my control. The vaccinator is paid by the Municipality; but the Government controls the department. The vaccinator searches for unprotected children and when he comes across cases of children whose births have not been reported he brings such cases to my notice. I ask the municipalities why they have not reported such cases. The answer very often is that these omissions will not occur in future.

Q. When are children usually vaccinated?

A. Children are generally vaccinated within one year of birth.

Q. What does the vaccinator generally do?

A. He goes from house to house to find out unprotected children. He compares the names of such children with the names in the birth register maintained by the municipality. If some of these names have not been reported at birth he reports the cases to me. Corrections are made in the birth register and entries are reinserted. In such cases the approximate age of the child is also given. So in these municipal towns registration of births is far from perfect. In the villages the registration is done through the Revenue Department. The Revenue Department have a village clerk called the Tapadar. He corresponds to the Talati or Kulkarni in other places. He has a beat of 24 square miles containing many villages. It is one of his duties to tour his beat once every month at least and it is also one of his duties to gather information regarding births in special forms which we supply him. For his own benefit and with the consent of the Deputy Collector he appoints what are called sub-registrars. So far as we are concerned we recognise the Tapadar and the sub-registrars have no legal status at all. Sometimes some school masters maintain a sort of register. The Tapadar gets extracts from these as well as from the registers of the sub-registrars and sends it to the Muktiarkar in his Taluk who in his turn sends them on to my office. These are compiled in my office and a statement is prepared and submitted to the Government every month.

Q. Do you think that in the villages between the Tapadar and the sub-registrar there is a fairly accurate registration of births and deaths?

A. It is better than that in the towns.

Q. Is there a column for the age of mothers in the case of deaths of children?

A. There is no such column. For deaths there is a column for the age of the deceased and for the cause of death. But these are not however very accurate. People generally say that death was due to fever. The age is pretty nearly correct but the cause of death may not be right.

Q. Is this the case in towns also?

A. Yes, there is some inaccuracy. Cases like Cholera, Plague and Small-pox are well-known and are accurately registered. But cases of women dying of fever after child-birth will be simply recorded as fever.

Q. Do you have columns, in the case of deaths, by age periods like 0 to 5, 5 to 10, 10 to 15, etc.?

A. Yes, we have got such columns.

Q. Can you give us the figures for the deaths of males and females from 0 to 5, 5 to 10, 10 to 15 and 15 to 20?

1. I shall give you a general idea just now. We find that in every country there is a tendency for more male births than female births. During the period 0 to 5 you find that any inequality that may be present between the male and female births is practically gone because there are more deaths among males during that time than females. It is found in an exaggerated form in Sind. From 5 to 10 the deaths are practically equal among both sexes. From 10 to 15, 15 to 20 and 20 to 25 you find more deaths among females. After the age of 25 you find that there are more deaths among males on whom probably the brunt of the struggle for existence falls till about 45. Then from 45 till about 50 the deaths are evenly divided. The child bearing age is between 10 and 25 and that particular period is more fatal to the female sex. I have prepared a chart on this subject which I shall show you presently.

Q. How many years will the chart show up?

A. The chart will show you the deaths in one year. It gives the proportion between the number of deaths. This proportion has remained practically the same for 1 or 4 years. The most interesting thing about Sind is the fact that Sind, of all countries in the world, stands unique in the scarcity of females. It beats Punjab in this respect. There was a great deal of discussion about this point, and in the censuses of 1891 and 1901 the question was raised whether Sind along with the North-western part of India was one of those provinces where female infanticide was prevalent or where there was a deliberate concealing of female births. This was investigated in the two censuses of 1901 and 1911 and in 1921 by Mr. Sidgewick and myself. We came to the conclusion that there is no evidence at all either that female births are concealed or that there is infanticide. We came to two different conclusions. One is that there is a racial factor in the number of females that are born which we call the *permanent factor* and the second factor was climatic conditions. The third factor was social customs. The racial factor was investigated by taking a caste which is widespread throughout the presidency and Sind such as the Mahars, Dheds, etc. We investigated and we found that although they were scattered over different areas having different climatic conditions they really had the same *female index* as we call it. The index is the ratio between the number of males and the number of females. We found that in the case of these people that index was always constant.

Mrs. O'Brien Beadon: Is not the index generally 105 males to 100 females?

A. Yes. But in Sind it is about 125 males to 100 females. This racial factor was also investigated in other places but we found that the index was not constant. Then we came to the climatic question, and we found that although the racial factor is dominant it is affected by climatic conditions. In Ratnagiri and other districts we found that more females were born and that the climate there was favourable to female production. We generally found that damp moist climates were favourable to female births. The third was the social custom. There is a custom among the Baluchis which is peculiar. Suppose a man suspects his wife of infidelity. He may kill her and yet be exempt from the law. He can only be tried by the *Jirga*. And so much is this custom rampant that many wives seek protection with the Muktiarkar or other Revenue authority to save themselves. The worst thing about this is that the man not only kills the wife, but he can claim from the suspected person another wife or money in lieu thereof. That sort of custom has practically demoralised the women in those tribes. I run a clinic when I am on tour and I find a number of women complaining about these things.

Mrs. O'Brien Beadon: Do you mean to say that these things happen in cases of real infidelity?

A. No. Supposing the husband is not pleased with his wife he can simply say that he saw his wife with some body else though it may be entirely false. The Baluchi Sardars whom I met told me that very often the woman

is entirely innocent. The man gets tired of his wife and makes a pretence. This happens in British territory, but there is altogether a different law prevailing there and a man murdering a wife gets only 5 or 6 years imprisonment. This counts for the reduction in the number of women. Another custom which prevails is this. There are certain tribes or castes amongst Muhammadans and other communities who will not intermarry with another caste or sub-sect of their community. Supposing there are excess of females in these castes, a man marries more than one wife. The reason given for this is that there was no other man in the tribe and the parents of the girl say that they would not give their girl away to a man of another caste. I am personally interested in the subject of the fecundity of women and that is why I have been collecting statistics. From my investigations I have found that there are tribes who have recourse to polygamy simply because there are more women amongst them. There are other tribes whose male members have to pay enormous sums to get wives simply because the number of women is smaller. I know of an instance where a Zamindar who had one son married 4 of his brother's daughters simply because these girls could not get husbands. I will give you another reason. In ages gone by there were numerous cases of infanticide. The birth of a female child was looked upon with dread. This acted on the minds of people and that became an acquired character. It resulted in the keeping up of endogamous marriages and that capacity was developed and there was ultimately an incapacity to bear female children. I have found during the last 50 years—I have got figures from 1872 to the present time—there is a distinct tendency to lessen fecundity. I do not know whether it is due to the advancing civilisation. Darwin has said that where one faculty is developed the reproductive faculty is lessened. We find that wherever the brain is developed, the reproductive faculty is lessened. Another thing is that in families here there is what is called the incidence of deaths. For instance we find in the districts that are famine stricken the number of women is more because women stand starvation better than men. The resistance capacity of women is more than men. Supposing in a certain village the number of males is greater than the number of females, at the end of one or two famines the number of men and women is practically the same. A practical illustration is this. In the Bombay Presidency between the years 1871 and 1901 the female index is going up and since 1901 the female index is falling. This is because between 1871 and 1901 there were famines which killed men in large numbers; and since 1901 we had such diseases as Plague and Influenza which took away more women.

Q. Why is it so?

A. Probably one reason is that females being confined to the house exhaust themselves by nursing others who are sick.

Q. Is it so in India only?

A. I am speaking of this Presidency only.

Chairman: Why is the death rate greater among Hindus than other castes who form the majority?

A. Majority of the Hindus that come to Sind from the neighbouring parts, Marwar and Gujerat are famine stricken people. They come for means of livelihood. They come practically from dry parts. They have been driven out for political or economic reasons. In Sindh the cultivation is carried on by irrigation. It is a highly malarious place. Those poor people who come from outside, we call them non-immune population. They fall a ready victim to this disease. They are being replenished by others every year. In years of plenty these people migrate. They only come here when they are obliged to do so. They are not permanent settlers. They come and go. Between 1911 and 1920 we imported as much new blood as 2 lakhs people. They are generally Kolis and Manghawas. During the last 12 years statistics were taken and about 20 per thousand died. Sindh has got lot of land and few labourers. There is lot of fallow land. If these

people find that conditions are not favourable they go and take service. They go from one village to another. This high death rate is therefore due to the place being malarious. It is impossible to protect them because they are migratory people. Moreover we have not yet undertaken any well-organised anti-malarial campaign.

Q. Why are the cultivating classes so thin?

A. I don't know why. We have more land than we can cultivate with our present population. Sindh is the only place in India where there is more land and less labour.

Q. Do you know about the marriageable age amongst these people?

A. So far as my impression goes there is no fixed age for marriage. Marriages take place more or less as a sort of exchange. Age is no consideration. If there is one sister and one brother in one family and there is another sister and a brother in another family, the marriage of these two couples will be arranged irrespective of age.

Mrs. Nehru: But that must be confined to certain communities.

A. I am talking of rural population. They find it more convenient to exchange girls. The question of age does not arise. When once one marriage has taken place there must be exchange. I have seen girls of 3 and 4 being married.

Q. But even if there is a system of exchange, can't they wait for a certain number of years?

A. But they don't trust one another. Girls in cradles are pledged. So far as marriage is concerned neither party thinks about the age.

Q. Is the girl immediately made over to the other party.

A. If she is 5 or 6 she is made over.

Q. When does consummation take place?

A. It depends upon the good sense of the parties.

Q. There must be some sort of moral code existing.

A. There is none.

Q. Is the system of exchange common among outsiders or only among original settlers?

A. Punjab Hindus and Mohammadans are also subject to similar customs. People from Gujerat who have settled here at Jamrao have not got this practice.

Q. Have you any reason to believe that child marriages wherever they exist result in consummation before 13?

A. I don't think consummation results. One of the questions that I asked during the course of my enquiry was 'how long were you married' and the answer was for instance, 10 years back, but when asked how many children he had, the reply was, usually, none? When asked why, the reply will be that he was married to a girl of 5 or 6 and there was no cohabitation therefore. That shows that marriage was not consummated till a particular age. The question of age does not worry them. The man simply judges by puberty or some such thing. I don't think early consummation actually takes place. No case has come to my notice.

Q. Have any cases of infanticide come to your notice?

A. None.

Q. Has any neglect of female children come to your notice?

A. None. On the contrary they are very much prized, because on their safety and life depends marriage. They are a marketable commodity worth their weight in gold.

Dr. Beadon: Is osteo-malacia common in Sindh?

A. I have seen a good few cases. I don't know whether it is common.

Q. Would you say 10 cases a year?

A. In my five years' practice I may have noticed about 20 cases.

Q. Have you noticed these cases in early married mothers? What age were the girls?

A. I cannot give the ages of the girls. They were all young girls between 16 and 20 and they were all married girls.

Q. Have you noticed a case of osteo-malaria where the girl had borne children?

A. Yes.

Q. Can you give us any instances where early cohabitation resulted in injury to her health or the health of her progeny?

A. I can give you two cases, that have come to my notice where the health of the mothers was practically ruined. These girls were married when they were 13 years old to men over 40 years. These husbands are my friends. When these girls came to me their health was ruined beyond repair. There was osteo-malaria with general neurasthenia in one case and manorrhagia in the other.

Q. What was the age of the girl when you saw?

A. 16.

Q. In your experience manorrhagia is very uncommon in that age.

A. That was one of the symptoms. Probably there was a graver injury behind.

Q. Have they borne any children?

A. No.

Q. Were they Hindu girls?

A. Yes.

Q. Were they very well off?

A. Yes.

Q. Would you say if there was any sign of gonorrhoeal infection?

A. No.

Mr. Bhargava: What is the population of the Baluchis in Sindh?

A. I cannot give the exact figures.

Q. What proportion do they form to the entire population of Sindh?

A. They form majority of the population in three districts, Larkhana, Upper Sindh Frontier and Sukkur.

Q. Will it be 1/20th?

A. More than that.

Q. The three reasons that you give for the population of females being less are not of general application to the whole of Sindh.

A. The climatic factor holds good. The racial factor is not common. Even the social customs are all different.

Q. Do these Kolis come from United Provinces?

A. No. They come from Gujrat where the climate is dry.

Mr. Kanhaiya Lal: You said that you have got a system of registration of births by Tapadars. Is there any obligation on the part of the parents or guardians to make a report?

A. No.

Q. In other words is the work voluntary?

A. Yes.

Q. How do you enforce it in practice?

A. We have no difficulty in enforcing it so far as we are dealing with Zamindari villages where the Zamindars hold themselves responsible to us.

Q. Has this been organised by the Health Department?

A. Yes.

Q. And not by the District Boards?

A. No.

Q. And are some school masters also utilised for the purpose of keeping these registers.

A. Yes, some school masters who volunteer. The school masters voluntarily undertake to keep these registers and hand them over to the Tapadar. The Tapadar is the real person who makes these reports.

Q. Are not omissions penalised?

A. No.

Q. Suppose we make it compulsory on parents on pain of penalty for omissions, would it not work better?

A. It would be rather difficult to work because the state of education and the understanding of obligations are very poor.

Q. But what about the Tapadars?

A. Most of these people will be practically tenants of the Zamindar. If only the Zamindars co-operate with the Government in the work they will supply us all kinds of information.

Q. Is the information reliable and accurate?

A. Yes; there might be one or two exceptions, but taking it as a whole, it is fairly good.

Q. Will it be possible to constitute vigilance societies of a voluntary character or bodies of workers such as you have for the registration of births to watch and report any infringement of the law in marital cases?

A. Yes, in places where you have the Zamindari system. But in Ryotwari villages it is not possible.

Q. Would you utilise the agency of the Zamindars?

A. Yes, and it is fairly reliable. This system is more efficient in its working than any laws you might make.

Q. Who makes the reports in the Municipal areas in the case of births?

A. The parents or guardians make the report to the municipal office. These people are supposed to go to the municipal office and record the name of the child. This is an obligatory system which is not working very well. The Zamindar is practically the master of the village and he can easily call the heads of the villages under him and get from them information as to how many children were born in their villages, etc.

Q. Have you got a system of Chaukidars?

A. No. The Tapadars correspond to the Patwaris and Kulkarnis of other places. Here the villages are all scattered and the control of the large area is made possible by the Zamindari system.

Oral Evidence of Khan Bahadur WALI MUHAMMAD HASAN ALI, Special Magistrate, Karachi.

(Karachi, 1st October 1928.)

Chairman: Are you now retired from Government service as Deputy Collector?

A. Yes. I was also a sub-judge. I am now a special magistrate. The special magistrate is distinct from an honorary magistrate and holds his own court.

Q. You are a Zamindar.

A. Yes. I was a municipal councillor. I was a member of the first and second Legislative Assemblies.

Q. Is your knowledge in connection with this questionnaire limited to the Hindus or Muhammadans or both?

A. As a Muhammadan my knowledge has necessarily to be restricted to Muhammadans. But from general experience I can say something about Hindu also so far as this province is concerned. But of course the answers I give about the Hindus must be taken with a pinch of salt.

Q. Do you belong to the Sunni sect?

A. Yes.

Q. Are there many Shias here?

A. No; the Shias here are comparatively very few. The Borahs and the Khwajas are Shias. Besides these two classes there are very few Shias in the whole of the province.

Q. With regard to these matters is there any difference in the practice between the two sects?

A. No. What applies to one community generally applies to the other as well.

Q. What is the marriageable age usually amongst the Muhammadans in this part of the country?

A. In this connection I might tell you that I did not reply to your questionnaire for the simple reason that this law will not affect Muhammadans very much. Generally speaking amongst the Muhammadans of Sind marriages of girls below the age of puberty are rare. The usual age at which girls and boys may be said to marry and do marry is not less than 16. There may be exceptions but they are rare.

Q. Does the practice differ amongst Hindus?

A. Of late even the Hindus of Sind are marrying their girls later.

Q. Since when?

A. During the last 10 years. The reason is that 10 years back there was no secondary education amongst Hindus at all. The Mussalmans are affected by Purdah and they do not send their girls to school after they are ten. The girl's education is therefore interfered with. Therefore besides a smattering of the vernacular Muslim girls receive no education. But Hindus have started secondary education as well as college education. They have given up Purdah altogether. I specially refer to the educated classes called the Aumils, but the Bania classes still observe Purdah. The educated classes have adopted the practice of marrying girls late; in some cases even after the girls graduate.

Q. What is the age of puberty amongst Muhammadan girls?

A. I can only give my opinion as a lay man and I think girls amongst Muhammadans do not attain puberty before 13 or 14.

Q. Do you think that a certain period elapses between puberty and actual consummation of marriage?

A. Yes.

Q. What is the age of marriage amongst the mercantile or Bania classes?

A. The age of marriage amongst the Bania classes is generally less. It may be 10, 11 or 12, but it is not below 10. The Bania parent thinks of marrying his daughter and get hold of a husband for the girl at a much earlier age than do the Aumils or Mussalmans.

Q. What about the Brahmins?

A. The Brahmins in Sind are a negligible number. I am not acquainted with their customs.

Q. With reference to question 20 would you have a higher age of consent or fix an age of marriage and penalise marriages? Which of the two in your opinion will be more effective?

A. It is a large question to answer, but from my experience of the world and the legislature I do not think such marital cases come to the courts. I am therefore of opinion that any change you may make in the present law will not have the desired effect. For whatever misfortune a father may have with regard to the girl's early consummation it will be

very difficult to expect him to go to a court of law. His going to a court of law would mean perpetual separation between the husband and the wife and perpetual disputes between the two families. Therefore I think that all reasonable parents whatever their misfortune will avoid going to courts. The police will not be able to interfere because you cannot make such offences cognisable, and they will rarely know such cases. Therefore any change in the law will be ineffective.

Even with regard to the marriage law I think it will be also ineffective. I should consider that there should be no change whatever. There should be internal social reform and that has been slowly going on with the result that the Annals have given up early marriage to a very large extent. They now marry their daughters after they finish their education. I would therefore personally prefer to have no legislation on the subject. But if the general opinion is that there should be reform and legislation, then I would say 16 for marriage of girls is not early. I would put the age of consummation still higher up.

Q. If marriages are penalised then marriage may not take place at all. But cohabitation is not so and the result is that very few cases come to light. But if there is a marriage law fixing the age of marriage at 14, marriages may not take place at all. What is your opinion?

A. I should not regret it. But any change in the law will not affect Mussalmans because ordinarily they marry their girls after 14. But one thing is that some orthodox Mussalmans are of opinion that there should be no restriction of marriage at all, for the reason that our Prophet married his wife Asha when she was a minor. They say that our Prophet did that and we should do the same. My reply to that is this. As a matter of practice we have never been following the Prophet. All over India so far as Mussalmans are concerned, several marry their girls after 16 so that we have not followed the Prophet. Then where is the objection to any law of this kind. People of my way of thinking are indifferent whether you make any change in the law or not.

Q. Do you think that there would be any serious dissatisfaction?

A. So far as the orthodox section of the Mussalmans are concerned they may take objection. They will say that you are putting restrictions when our Prophet married a minor girl. Interference with religion they would object. Personally I think that is no objection at all.

Mrs. O'Brien Beadon: With reference to question 11 have you met any cases in which early consummation has been injurious?

A. Throughout my experience as a magistrate for about 30 years I have not had a single case of this kind. But in certain towns or villages I have met persons who told me there have been cases where girls have been injured by their husbands. I do not know any from my personal knowledge.

Q. Do you think that early consummation is the cause of any evils?

A. My opinion will be that of a lay man. Better opinion will come from medical men. But I think certainly that if a girl has cohabitation with her husband before maturity or puberty she may be injured.

Q. One of the witnesses told us that there would be a great danger in sending girls to school; that sometimes they might be seduced. Has any such case come to your knowledge as a magistrate?

A. I have not come across any such case as a magistrate. But I know of a case in which a school mistress was carried away and she was a grown up girl. Otherwise I do not remember any case in which a girl was carried away.

Q. We are told that in Sind there is a great deal of seduction. Does that occur in Karachi?

A. My experience is that this scare of seduction is more manufactured than real. I am afraid that some Hindu papers have been raising this cry of late with a view to get Muhammadans into trouble. On the other

hand I have noticed several cases mentioned in Mussalman papers in which the seduction is by Hindus themselves. Generally I do not think that the cry of seduction is really such a danger as it is supposed to be.

Q. Is it that such cases do not come to light or is it that the crime is not common?

A. I do not think that such cases would not come to light. Surely if a girl is seduced or carried away, the parents will not sit quiet. It is unlikely that cases will be hushed up.

Q. Are they girls under 14 or over 14?

A. It may be below 14 or above 16 also. I cannot tell you the exact age but generally speaking whenever such cases occur it is usual to say that the girl is a minor so that the case may be made cognisable by the police. Otherwise the police cannot interfere. Frequently it happens that the age of the girl is much above what it was reported to be.

Q. On that account would you be in favour of raising the age of consent in extra-marital cases to more than 14, say 16 or 18?

A. How will that make any difference?

Q. If the age is raised to 16 it will be cognisable by the police and the case would be included in the police officer's cognisance.

A. But I do not know how that would make any appreciable change. Whether she is married or unmarried the danger will remain all the same.

Q. Do you think that it is not worth a change in the law?

A. No.

Mrs. Nehru: Have you in your experience as a magistrate come across a case in which the age of the girl was disputed?

A. Yes, very frequently.

Q. Have you found much difficulty in deciding the age or is the birth registration satisfactory?

A. Ordinarily speaking the courts of law have to go by the opinion of doctors in regard to the age of a particular person. The civil surgeon is sent for and his certificate is taken as the gospel truth. In one case which I tried some 40 or 50 years ago, in which my father defended a Hindu boy who had become a convert, the civil surgeon was so handled in the Sessions Court that he was made to go against his own certificate and he was so annoyed that he tore off the certificate and was out of the witness box. It very often happens that one doctor says that the boy is of such and such age and the other doctor says, no he is of such and such age. The judge has to form his own opinion then. He takes the commonsense view. It is not infrequent that doctors disagree.

Q. Can you make any suggestions with regard to the registration of births so that the doctor's opinion may not be necessary at all?

A. In large towns there is compulsory registration of births and deaths. It is compulsory in Karachi and Hyderabad. I am not sure about Sukkur and Shikarpur. I think it is compulsory there also. In the rural parts of the country there is no compulsion at all. It is either the school master or the Munshi or the Bania shop-keeper who does it and the records are extremely unreliable. It will cost a lot of money to make this registration trustworthy.

Q. Leave aside the rural areas, are you satisfied with the registration of births in towns?

A. Generally speaking, I can speak more particularly about Karachi and Hyderabad where it is quite satisfactory.

Q. Are these registers kept permanently?

A. Yes. I had once to get the date of death of my own father who died in 1895 and quite recently from the municipal records I found it.

Mr. Bhargava: Can you say how many cases have come to your court about seduction, etc.?

A. I could not give the exact figure. I don't think more than 2, 3, 4 cases a year would come.

Q. The ages of the girls seduced were a'out 13 or 14 years or more?

A. I am not quite sure, but I believe in a case which I committed to the Sessions about 6 months ago the age of the girl was found to be above 16 though it was represented to be 14. The ages vary between 14 and 16.

Q. Don't you think if the age were raised to 16 the girls would be protected?

A. In what way? If a young man takes away a girl whether her age is 12, 13 or 14, he spoils her all the same, whether you punish him or not does not make any difference. If a man carries away a woman, be she a grown up woman or a girl, he does not mind his being sent to jail for even 12 months.

Q. Do you want to make the punishment more deterrent then?

A. My experience is that heavier the sentence you give the more confirmed offender would a person become for the rest of the life. I don't think heavy sentences have proved to be a blessing.

Q. So neither the raising of the age nor a heavy sentence would make any difference.

A. I think you ought to extend education, you ought to do more propaganda and social reform work. These are the remedies and not jails.

Q. Do you mean this penal provision is of no use?

A. I will not go so far. The existing penal provision has got some value. It will be useful to a certain extent. You can't say you must do away with all punishment, with all imprisonment, but you cannot stop an offence of any kind by giving severe punishment. So long as the world lasts, offences must be committed. All punishment has got a certain limit and if you go beyond that a reverse effect is produced.

Q. But will it not be greater protection if the age is raised from 14 to 16?

A. A person who elopes a girl does not take the trouble of finding out the age of the girl. Passion and lust make him blind. An educated man may perhaps think of that.

Q. In the case of educated people this may have some effect therefore.

A. To a certain extent.

Q. So you do not object if the age is enhanced to 16.

A. I have no objection to raise the age of consent nor the marriageable age because it does not affect the Mohammadans. They may object from one point of view. They may say when the Prophet married a minor why should we not marry at any age. From my point of view there can be no harm done, because our practice already exists to marry at a late age.

Q. Supposing this assumption is not correct, would you then be in favour of raising the age of consent and the age of marriage?

A. Yes.

Q. There is no complaint about the Hindus seducing Mohammadan girls.

A. Because Hindu population of Sindh is very small. Muslims being in the majority there will naturally be more offences committed by Muslims than by Hindus. If you go to jail you will see that there are more Muslim prisoners than Hindu prisoners.

Q. In the rural area you think, the marriageable age among Hindus and Muslims need not be increased by legislation as they are already marrying late.

A. So far as Muslims are concerned it need not be, but so far as Hindus are concerned I believe child marriage still exists. It is even more than in the cities.

Q. Is there any feeling among Hindus that if they do not marry at an early age their girls may be taken away?

A. No. I think it is custom, it is religion, that they marry early. Among Hindus as soon as a girl reaches 9 or 10 the father begins the search for a husband for her. The first offer among the Hindus comes from the girl side. This is not so among Mohammadians. In their case the first offer must come from the husband side. That makes all the difference. As soon as a girl reaches a certain age a Hindu parent will employ messengers to find out a husband. This is not so among the Mohammadians. They employ nobody. Hindus sometimes employ Bhathanis.

Q. We have been told that among Muslims also there are exchange marriages.

A. Yes, very frequently.

Q. Do these marriages take place at a very early age?

A. No I don't think. Exchange is among cousins and most acceptable matches. I don't think, because there are exchanges they are married early. Wherever it takes place it is only to prevent the other man from backing out.

Mr. Mudaliyar: Have you come across any cases of rape as a magistrate?

A. Several cases.

Q. Are these cases both among Hindus and Mohammadians.

A. Well, there are cases among Hindus even, but I do not recollect at the present moment a Hindu case having been brought before me.

Q. Would you say rape is one of the common offences here?

A. No.

Q. How many cases a year would you put it at?

A. It is very difficult to say.

Q. How many have come before you?

A. I can only say from newspaper reports. I don't think in a particular year more than a dozen cases occur.

Q. Am I right in thinking that cases of rape are more common than cases of seduction?

A. I would not put it that way.

Q. Do you think raising the age of consent would help in stopping rape? Supposing the age were raised to 16 then consent would not be an effective defence.

A. Does it follow then that cases of rape would be few.

Q. But will not the crime be punished?

A. Whatever the age the girl does not really know the consequences. She is not in a position to give valid consent.

Q. Supposing the man is punished.

A. What does it matter?

Q. You say if a case of consummation before 13 comes to court there will be great trouble. There will be a bitter feud between the two families. Don't you think the disadvantages that you point out regarding the perpetual separation and feuds will not occur in case an age for marriage is fixed?

A. I don't think a law of this kind will avail. I will give you one specific case. Suppose a man has lost his wife and has nobody else in the house except a little girl of 12 or 13 who is below the age fixed for marriage. The man is an old man with perhaps one leg in the grave. He wants to see his daughter settled. You want to postpone marriage till after his death. The girl may be taken away by somebody else.

Q. Will not these cases of hardship occur whatever may be the law?

A. My whole evidence is that such cases of early marriage are very few among Muslims. With regard to Hindus I agree that the marriage-

able age should be raised and it is to the advantage of all concerned. So far as rural areas are concerned early marriages among Hindus are still common. Therefore bearing in mind the fact that I am a Muslim and am not supposed to know much about the Hindus, I would certainly say raise the age.

Mr. Kadri: Are you the Secretary of the Mushni Madrasa here?

A. I am a member only.

Q. Are you very familiar with Mohammadan sentiment?

A. Yes.

Q. Is there any injunction in the Koran saying at what particular age marriage should take place or any restriction against any particular marriage being celebrated?

A. Well, I am not a divine. So far I have not come across any injunction one way or the other. What has been in the mind of some is that because the Prophet married a minor girl there should be no restriction with regard to the age.

Q. But are the circumstances under which that marriage took place known?

A. I know the Prophet lost his wife; he was very morose on that account, he had nobody to take care of his household, he was advised to marry at once and this girl was offered to him and therefore he accepted her. Of course we respect the practice of the Prophet. But the Prophet never enjoined that Muslims should marry at any particular age. On the contrary we find that all other marriages were of fully grown up girls. So far as our province is concerned, the very fact that marriages generally take place after 14 or 15 shows that there is no injunction in the Koran in respect of marriage of girls and boys.

Q. And so far as consummation is concerned is the general trend of Mohammadan opinion to the effect that it should take place after puberty?

A. Certainly. Because till then the girl has power to repudiate. This is what is called the 'option of puberty'.

Q. In some parts of the country early marriages take place. In Godhra, for instance, they marry at 9 or 10. In such cases do you think legislation would be advantageous?

A. I think so.

Q. And also to support this marriage legislation would you advocate the raising of the age of consent?

A. Yes.

Q. You would put it at 16.

A. Yes.

Q. So far as the keeping of birth registers is concerned, we have been told by the assistant director of public health, that, the work done by the Pattadar assisted by the school master has been very satisfactory.

A. With due respect to the assistant director I challenge that opinion. Unless some improvements have taken place after 1915 I think the system is not satisfactory. The Pattadar goes round every week, to each village, and makes enquiry about the births and deaths that may have taken place. He may not get sufficient information. Some people may have died, and some children may have been born of which he may get no information. When I was a District officer one of my duties was to go about and make enquiry and see these registers and I invariably found that these registers were not at all complete and in some cases they were not kept at all.

Q. Is it not a fact that schoolmaster also assists as a sub-registrar and keeps registers of births in the villages?

A. Yes, he may be doing it but I do not know that he is doing it throughout. In Sind the population is so sparse and only one school exists in an area of about 12 miles. If there are small villages round about, how is the schoolmaster to know. He does not go out from his school. If

any information is given he will register it but if no information reaches him it is not his duty to go and enquire about it. The information that he gets will not be in all cases reliable.

Q. What is your opinion about getting a marriage register enforcing the registration of marriages?

A. That is a question in which I have taken a good deal of interest and I was at one time going to propose in the Assembly that such a thing should be done, but there are unsurmountable difficulties and enormous expense which the Government could not undertake. Therefore it is not practical politics. In larger towns like Karachi and Hyderabad some of the *muftis* who perform *nikahs* do keep their private registers but I very much like that these registers be compulsory if it were possible.

Q. Could you tell us what obstacles there are in making it possible?

A. Of course so far as larger towns are concerned the difficulties may not arise but all the same the first thing that will have to be done is that some *muftis* must be appointed and they should be conversant with all things.

Q. That means that the number of these men will be very few?

A. But in large towns like Bombay and Karachi you require hundreds of men.

Q. How many have you got in Karachi?

A. I do not know. Only *muftis* perform the *nikah* but they are very illiterate.

Q. Would it not be proper to have some official?

A. I should think so but the question is whether the expense will be incurred by Government. There will be several difficulties but this is the chief difficulty. In out of the way villages you will have to find out a really competent man who will be able to perform the *nikah* according to the rules of the Shariat. Now we find that these *Mullas* are absolutely ignorant and illiterate and yet they pose as *muftis* and perform *nikahs*.

Q. Any other difficulty?

A. I have not thought on the subject but I am sure that if I am to think of many will crop up. Another difficulty is that where the girl is a regent girl then the registrar will have to get some evidence that the *nikah* has been performed. The best evidence is herself but she cannot be got at. She must go to the registrar or the registrar must go to her and she is living at a great distance. *Purdah* ladies cannot be brought and he cannot go because he cannot pay the fare and so the marriage cannot be registered.

Q. Thumb impression of the girl can be taken.

A. If the thumb impression of the girl is to be taken registrar should go to her.

Mrs. Brijlat Nehru: Are not all these difficulties involved when birth is to be registered?

A. No, because so far as birth of children is concerned there is no difficulty, but there are some difficulties in the case of marriage. If there is a dispute of marriage of a particular girl and there are two claimants, one says I was married to the girl and the other says I was married to her. In such cases thumb impression will be a very important business but sub-registrars can be bribed. No such thing will happen in the case of birth of children. There will be no disputes. The only factor that is to be found out is that a particular child was born to a particular person.

Mr. Kadri: The births of children have also been disputed?

A. I cannot think of.

Q. In the Punjab have they got marriage registration in the *Mohamedans*?

A. You mean official. Only *Quazi* performs it.

Mr. Keshab : Jai! I understand that you are in favour of marriage legislation, fixing the age at 16 and you are in favour of penal legislation fixing the age of consent at 16?

A. Yes.

Q. Suppose there is no marriage legislation, then will you be in favour of penal legislation fixing the age of consent at 16?

A. I would be perfectly indifferent because as I said this thing does not affect the Mussalmans in Sind at any rate.

Q. Talking of the people generally and as the next best thing will you have any objection to fixing the age of consent?

A. Certainly not. The difficulty will be about making the law effective.

Q. Can you help us by suggesting some measures to make the law effective as to bring cases of infringement to light?

A. It is more than I can tell you. It is a very difficult question. In such cases both sides are interested in hushing up and I cannot suggest any effective measures.

Q. One measure has been suggested to us, namely, that we might have vigilance societies in towns as well as in villages, or village panchayats to look after and watch these cases and to report them to the proper authorities?

A. I do not think even such societies will work especially in the rural areas where the members of the vigilance societies would be members of the panchayat; and the members of the panchayat would be prevailed upon to hush up matters of this kind in the interests of both the families. Therefore such societies in rural areas will not work. In larger towns such societies may work better; but there again, if the members of a vigilance society belong to a particular community, only then so far as that community is concerned, there will be an effort to hush up.

Q. But not so, if it be representative of all communities?

A. But the question is whether these vigilance societies will have any power or abiding interest. A vigilance society formed to-day may be enthusiastic and energetic for the next 3 months; but thereafter their interest may wane and after some time the society may perhaps come to a stand still.

Q. Will there not be some public spirited men and women everywhere to take an active interest in promoting these vigilance societies to do educative work, and to help in bringing cases to light?

A. May be possible but I have no faith.

Q. What age would you recommend for non-marital cases?

A. I would not go beyond 16.

Q. You think that a girl is fit to give intelligent consent at the age of 16?

A. I do not think so. I think she is not fit to give intelligent consent on any particular age. She cannot give intelligent consent at 18 or 20.

Q. You have said that the system of registration of births is not working satisfactorily.

A. I am speaking of my experience some years ago.

Q. Now suppose we make it obligatory on the parents and guardians of the child to report all cases of births and deaths at the risk of a certain penalty? Would it be more satisfactory?

A. Yes it will be; but it is doubtful whether any law of that kind will work. The man who gets a child is 5 or 10 miles away and he will have to walk that distance to the registration office. We have got no landrads. We have got zilladars but that official may be away from the village.

Q. Suppose we ask the guardian or parents to make a report to the Patwari, can he not send it on to the tahsildar?

A. But a patwari does not remain in one place, he has a round of 10 or 12 miles within which there are many villages and he has to go to the taluka. Sometimes he sits at the headquarters for months. During that period who will do it. It is even difficult for villagers to know where he is.

Q. Can you suggest any other constructive method?

A. I have not given the subject a thought.

Q. But you condemn the voluntary system?

A. Yes, I condemn it altogether. The police in Sind is very undermanned and there have been very frequent complaints and recently there has been retrenchment.

Q. Supposing we ask the postmasters and schoolmasters to take up the work?

A. Even postmasters and schoolmasters are very far away. We have no schools over an area of 20 miles. The only thing which occurs to me at the spur of the moment is that the Government should appoint sub-pattawalas to go round the villages from time to time and find out the facts in the villages.

Q. Who makes the reports about crime in Sind?

A. Nobody. Anybody who comes to know about an offence having been committed runs to the nearest police station and makes a report.

Q. Then there is no man responsible for watching the peace of each village or looking after cases of breaches of the peace and reporting to the proper authority.

A. I do not say that. Each taluka is divided into two or three police stations under the charge of a sub-inspector of police. The Sub-inspector has got head constables and constables under him. He has to go round his beat or charge. In their beat if they come to know about any crime having been committed they make a report. If they have gone out or if they have gone in one direction and a murder takes place in another direction, then some aggrieved person or any other person runs to the police station and informs there. Then the police go and investigate the case. In Sind the villages are very scattered and every village means two or three hamlets. Large villages are very few in each taluka. These villages are far apart.

Q. Supposing we ask the parents and guardians to send reports by post?

A. That is also not possible because they are illiterate. The only proposal that strikes me is that there should be a paid agency to go about for this purpose and it should be the duty of that man to go over from village to village and then you will know the true facts about births and deaths.

Written Statement of Mr. KALUMAL PAHLUMAL, B.A., LL.B., Judge, Court of Small Causes, Karachi.

From what I have gathered during my experience extending over 23 years at the Karachi Bar before I joined Government service last year and from what I have observed in the course of my association with various Hindu communities in Karachi, in my view the age of consent in clause 5 of Section 375, Indian Penal Code, should be raised to sixteen from 14 years in case of strangers. Violation of the section in the Indian Penal Code in my opinion is mostly in case of married couples. Cases outside marriage are few and far between. Increase in age of girls to 16 in case of strangers, will I think, be a sufficient safeguard. Age now fixed at 13 years in case of married couples in the exception to the section, should be left untouched. The most effective way in the case of husbands to prevent cohabitation with their wives before they attain age of full 13 years is to have a section added

to the Indian Penal Code, penalizing marriage in case of girls before they have completed the age of 13 years and in the case of boys before they have reached the age of 17 years. The present age of 16 years in my view in case of boys is low. I have a firm conviction that in 90 cases out of 100 cases where girls are married before the age of 13, cohabitation does take place to the detriment of both the husband and wife and 99 such cases out of 100 escape detection. It is highly improbable, looking to the habits that have taken deep root among Hindn society, high respect in which husbands are held, the indissoluble tie that a Hindu marriage creates and the delicate connections that spring up in two families connected by a marriage tie, that violation of the age limit in the case of husbands would be brought to light and culprit punished. It is not difficult now-a-days in big cities, and even in villages where births are reported, to ascertain exact age of the pair, before wedding. I would therefore suggest that in addition to cohabitation by husbands before the age above said being penalized, obtaining of the certificate as to the age of the pair should be made a condition precedent to the wedding. The power, however, as to the issue of such certificates should be vested in a committee not consisting of less than three very reliable persons, one of whom may be an official, authorised to issue certificates needed, after making the necessary enquiry in a summary way, if need be. Certified copies of entries from birth and death register should be accepted as conclusive proof of age except in cases where such entries are not available or where they appear unreliable when other evidence deemed sufficient by the committee may be taken.

The above said precautions in my view will achieve the desired result of preventing the untimely death, in case of young mothers, stopping break down in their health, and accomplishing to an appreciable extent the much desired, and badly needed want of India of not bringing into existence immature and weak progeny not of much use. Time has however not yet come, in my opinion when the age limit in case of girls should be raised in case of married couples to 14 and 18 as suggested. Raising of the age beyond 13 and 17 will, I am sure, create a stir and the offences committed will be so numerous that the measures in this direction will be construed as a great hardship and not tolerated. Herewith appended are my answers to the queries to be read in the light of the above remarks. I have no objection to be examined on the points in question, should I get necessary leave from service, for the purpose.

1. No. In case of strangers, the age of girls should be raised to 16 years.
2. See my observations.
3. They are not frequent except among Mahommadans and low castes of Hindus. The age of girls should be raised from 14 to 16 in case of strangers.
4. No, for reasons already given. The amendment in my opinion, has not postponed consummation of marriage, nor stimulated public opinion except in a very narrow circle of enlightened people, nor has the amendment put off marriage beyond thirteen.
5. On the completion of 12 years usually.
6. Cohabitation is not common, I think, before puberty. It takes place soon after puberty and in many cases before the age of 13. Such cases as a rule are never taken to the Court.
7. In this province of Sind, as far as I know, there is no religious injunction referred to.
8. No such ceremony is known or performed in this part of the country.

In my view, attainment of puberty is not a sufficient indication of physical maturity to justify consummation. A year after puberty in case of well grown and well developed girls would be a safe limit for consummation.

10. At the age of 16.
11. I have noticed many cases resulting in injury before the age of 13. I am not prepared to give instances.

12. Surely.

13. The bulk of people are indifferent in this direction. It is only few enlightened people that would naturally and reasonably ask for progress in this direction.

14. Certainly not.

15. I cannot say this. Measure I would suggest is that it should be compulsory everywhere to report births under Birth and Death Registration Act.

16. I have already explained in my reasons appended.

17. Yes. In case of strangers, the punishment should be as it is now. In case of husbands the punishment should not exceed 3 months' simple imprisonment or/and fine not exceeding Rs. 1,000. Though this punishment is light, it would act as a deterrent in most cases. Punishment higher will raise very intensive feeling against the measure.

18. Yes—Trials in case of husbands should be in camera and not conducted by Magistrates. Such cases should be triable solely by Judges administering civil justice specially empowered for the purpose.

19 and 20. I have already explained this.

21. Both.

Oral Evidence of Mr. KALUMAL PAHLUMAL, B.A., LL.B., Judge, Court of Small Causes, Karachi.

(Karachi, 1st October, 1928.)

Chairman: I understand that you are for a law penalising marriages of girls and boys below 13 and 17.

A. I have changed my view. It should be 14 and 18. Since these answers were sent I enquired from some heads of the parties and have been told that 14 and 18 will be better.

Q. Something like Sarda's bill?

A. Yes. I think 14 should be the minimum in the case of marriage.

Q. Do you think that the law of the Age of Consent raised from 12 to 13 in the case of husbands has been effective?

A. Not at all.

Q. In the case of strangers the age is 14. Is that effective?

A. In the case of strangers so far as Hindus are concerned we find very rare cases in Sind.

Q. Has the law been effective within the marriage?

A. No.

Q. Outside the marriage?

A. To some extent.

Q. Do you think there should be extension?

A. Yes, it should be raised to 16.

Q. I see that you have stated that the Age of Consent is 16 and for that reason you say that it should be the same against strangers?

A. Yes, then they understand the consequences of their act.

Q. Would you have a minimum age for marriage?

A. Yes, it should be 14.

Q. Do you think a law penalising marriages will be effective?

A. Not without the other remedies that I have suggested. I have suggested that no marriage should be celebrated without first obtaining a certificate. What I am suggesting is that there should be no wedding.

Q. Then you practically stop the offence altogether.

A. Yes, if a certificate is obtained that the girl is 14 years, the wedding may take place.

Q. Do you want a sort of preliminary enquiry to be done by a body of 3 people one of whom should be an official?

A. Yes.

Q. In every marriage?

A. Yes. Or I would suggest that this work may be entrusted to some judiciary only.

Q. What do you think the number of marriages in a year will be? I mean all classes.

A. A couple of thousands.

Q. Who should these two other men be?

A. Non-officials.

Q. Should one be of the status of a sub-judge?

A. Some judicial man.

Q. Do you think we would get 2 non-officials to assist at the enquiry of 2,000 marriages?

A. But how many honorary magistrates have we got without any remuneration. Then I suggest that this work should be entrusted to a judge singly and that will be a satisfactory enquiry.

Q. Do you find any difficulty in finding assessors?

A. They do come. I think we will be able to get them.

Q. You suggest a preliminary enquiry?

A. It should be a summary enquiry just to satisfy within reasonable limits that the age is right. If a birth certificate is produced it should be considered as conclusive unless there is fraud of some kind brought to light.

Q. That is the mode of evidence to be taken by the sub-judge?

A. Yes.

Q. That is for families in one city. In a taluka like Karachi there must be numerous marriages. Do you think one official will be able to cope with that?

A. You can have different people in different places. Outside commercial cities you find people having lot of leisure and they want some sort of work.

Q. Then there will be another difficulty. For obtaining a certificate from an official he will have to bring a number of witnesses to satisfy the magistrate. Do you think it is really possible?

A. As a rule horoscopes are kept.

Q. Are they kept by the Hindus in the villages?

A. Yes.

Q. But will everybody take the trouble to keep horoscopes? And even if they keep such horoscopes will they take the trouble to go to distant places and report?

A. You have got such things in Sind. Here people do actually go to distant places to report.

Q. Do you think people will really care?

A. Yes, if they had the welfare of the community at heart.

Q. Do you not think there will be a good deal of trouble?

A. I do not think.

Mrs. O'Brien Beadon: With reference to paragraph 11, you say that you have known of cases resulting in injury. Would you mind telling us what sort of injuries they were? Were the girls married before 13 and what happened to them?

A. I have known instances where there has been child birth before 13 and girls have died.

Q. How many such cases have you come across?

A. In my community in these 5 or 6 years I have found at least a dozen cases.

Q. What is your community?

A. The Baghnari community. We come from Baluchistan.

Q. Have you known cases in which the girl giving birth to a child so early has survived?

A. Yes.

Q. Was she without injury?

A. Of course she has been all her life a wreck. The children were of poor physique.

Q. In these cases were they people who were in poor circumstances?

A. They were well-to-do people.

Q. What will be the percentage of such cases in your community?

A. In Karachi our community consists of only 1,500 souls and yet there have been such a large number of cases.

Q. Is child marriage common in your community?

A. Yes, that is why I have suggested stopping it before 14.

Q. In the case of early consummation a girl after confinement usually gets pains in the bones and her legs are distorted. Is it found in your community?

A. Yes, there are one or two such cases in our community.

Q. What is the age of the girls?

A. They are now women advanced in age; but it has continued for years. They may be about 30 now.

Q. Were they married under 14 and had they children under 14?

A. Yes.

Q. Was it after the first birth that these things happened in their case?

A. Yes.

Mrs. Brij Lal Nohru: Have you tried any cases under this Act?

A. Not to my knowledge among Hindns. But I came across one or two cases among Muhammadans; but both communities are unwilling to report cases.

Q. In these cases what were the ages of the girls?

A. About 13 and 14.

Q. What is the reason why people do not come forward with complaints?

A. Amongst Hindns the connections are very delicate. There is the joint family system and happiness depends upon the peace of the family and nobody likes a disruption.

Q. Supposing the right of complaint is given to social reform organisations, will it work?

A. I do not think they will be able to find out at all, unless they are assisted by somebody interested.

Q. Are there not people sufficiently interested to help social reform organisations?

A. The tendency of the community is to save such cases from the public gaze and they will be stand combined. They are not sufficiently advanced yet.

Q. Supposing means are devised to save it from the public gaze, will it work?

A. You will then probably get some cases.

Q. Do you suggest that special judges should be appointed to try these cases?

A. These people will have an awe for the criminal courts. The judges may be specially authorised to examine such cases in camera.

Q. Do you think as a form of punishment, if a bond is taken from the parents of the girl or the boy to keep the children separate till they attain the prescribed age, it will be possible?

A. That depends upon the mentality of the parents involved. I do not think that it is possible.

Q. You do not consider it a penalty sufficient to check the evil.

A. But who is going to bring it to the notice of the courts. If the boy and the girl live in the same house nobody is going to check it. Nobody will ever disclose such cases.

Q. Is Gaona prevalent amongst your community?

A. No. No community in Sind does it.

Q. How much interval is there usually between marriage and consummation?

A. None whatsoever.

Q. Do you think there is any other cause for this law being ineffective besides the fear of publicity?

A. Relations are affected. The feelings of the parties that are connected by this tie of marriage are estranged. In a joint family the position of women is very undesirable. It is the manager that rules the whole family.

Q. If doctors are asked to report these cases will it be effective?

A. It might have effect, but there is very little chance.

Q. Do you not think that giving the right of complaint to social reform societies belonging to the same community as the parties will have some effect?

A. So long as education is low it is very difficult. Education is very low here except in the Alhmil community.

Mr. Bhargava : You have suggested that there should be a Committee who should examine the boy and the girl and give a certificate. I understand that one official will have to go into the question of the age of the boy and the girl and he should have medical knowledge. Is that so?

A. No; he need not have medical knowledge. I have already suggested that the reports of births should be made compulsory and therefore the question of age will not be difficult to decide.

Q. Supposing this system of registration of births and deaths is not complete or it takes a long time to do so, that official should have some experience to find out the age. Do you not think that it is very difficult to get such officers so far as rural areas are concerned?

A. Even now we have got most of the judges who are not medical men and yet they decide such cases. The horoscopes will decide the age.

Q. Do you not think that the boy will be put to much expense for bringing in witnesses, etc., in case there is such enquiry?

A. The expenses will not be very great seeing that these people spend a lot on marriages.

Q. Among Muhammadans there is no system of keeping horoscopes.

A. But amongst them marriages are not common before 14.

Q. So far as getting a licence for marriages is concerned, do you advocate it only for Hindus?

A. No; for all.

Q. Then do you want all the people to go to long distances and take the trouble?

A. Yes, they will have to go; otherwise there is no guarantee.

Q. Would not there be dissatisfaction?

A. I think people will come forward themselves. It will not be a lengthy enquiry. The boy will be seen and the certificate produced. Such cases will be summarily dealt with.

Q. Do you think that there should be some appeal against the order?

A. No.

Q. You say that this law has not been effective. Do you not think that the existence of a provision like this is by itself a check even if cases do not come to court?

A. I daresay in my community beyond to myself and one or two other persons the law is not known.

Q. Supposing it is made public and every body knows that the infringement of the law is an offence, would it be effective?

A. Yes, but what I suggest would be this. The Mukhis or leaders of the community should be informed of this. At least six months or years should pass before the law is brought into force.

Q. Are there many cases of seduction in Sind?

A. Such cases are very few among Hindus but there are some among Muhammadans.

Q. Do these cases generally relate to girls of 13 or 14?

A. Sometimes even above.

Q. As a judicial officer do you think that it is very difficult to know the exact age of the girls?

A. Yes, unless there is a compulsory registration of births.

Q. In your opinion even if there is no registration of births is it not very good to raise the Age of Consent?

A. Yes.

Q. Would you like that the registration should be effected in the following way: namely that the Patwaris or headmen ought to keep the register and in that register they ought to register every birth.

A. Yes, that will work.

Q. Just as there is an obligation even now, would you like that there should be a corresponding obligation on the parents to report these births?

A. Yes.

Q. Or would you like a separate establishment under a Joint Registrar of births and deaths?

A. No, that might be expensive, whereas the system suggested by me is not. This is what is being done in Karachi, and this system works satisfactorily.

Q. Along with registration of births and deaths does your scheme contemplate the registration of marriages also?

A. Yes.

Q. This register will be kept by the officer who is entitled to issue the licence. Supposing this scheme of yours is not accepted, then how do you propose to keep a register of marriages?

A. The same officer who registers documents may be authorised. He is a high official.

Q. If these marriages are to be registered, on whom should the obligation to report be placed?

A. The guardians, or if the girls are themselves majors on the girls.

Mr. Kanhaiya Lal: You have said that a girl reaches physical maturity a year after puberty if she is well-grown and well-developed. Ordinarily what would be the margin that you would leave after puberty?

A. It should be 2 years.

Q. Supposing the age of puberty is 13 or 14, then would not the age of consummation come to 15 or 16?

A. Yes.

Q. Would you then recommend the Age of Consent to be fixed at 15 or 16?

A. Yes.

Q. Can you tell us how the system of registration of births is working?

A. It is working very satisfactorily. There is hardly a case out of a thousand which is not reported.

Q. In rural areas?

A. It works very satisfactorily.

Q. Are there any rural areas which are not covered by these rural boards?

A. Very few.

Q. What is the system in the rural areas?

A. We have got regular officers appointed by the municipality, and outside by the taluk boards. Thus the whole area is covered.

Q. Is there any Act relating to the registration of births?

A. In Karaehi it is compulsory. It is equally compulsory in other areas under the Taluk Boards Act. There is provision in the District Municipalities Act and the Taluk Local Boards Act, and there is penalty attached to omissions to report.

Q. You say that the obligation is placed on the parents or guardians to make the report within a certain period. To whom is the report made?

A. There is an officer to whom these reports have to be made.

Q. Has the Tapadar or Patwari to register the births in the villages?

A. Yes.

Q. Instead of a system of obtaining a certificate prior to the wedding, would you be in favour of a system of registration of marriages after they are celebrated, giving the names of the marrying parties, their ages and other particulars?

A. No, registration after marriages may not stop consummation before the age fixed.

Q. In other words do you anticipate the danger of the ages not being given correctly?

A. Even if the ages are given correctly, there is the danger of consummation taking place.

Q. Where the age is correctly described; would there not be a fear of a breach of the law being found out?

A. In Sind, even now, there is cohabitation under 12, but I have not come across any case of the kind cropping up for trial.

Q. Mr. Rupchand Bilaram has told us of two cases that were tried in one year?

A. There have been lakhs of cases where the law has been broken.

Q. In Sind does the infringement of the law amount to lakhs?

A. It is for the whole of India. Where there are child marriages it is common.

Q. Can you suggest any measure for making the law effective?

A. I do not like marriages to be performed before 14.

Q. Suppose the legislature is unable to pass an enactment to this effect, then you have suggested that the Age of Consent might be fixed at 14. I want to know whether you can suggest any measure to make it effective.

A. I said that people should be acquainted with the law. At least six months before this law is enforced it must be brought to the notice of the leading members of the different communities. It should be made obligatory on them to make the whole of their panchayat informed of it.

Q. Would you recommend vigilance society in each community to bring these cases to light?

A. So far as Hindu joint families are concerned, I do not think, that will succeed.

Q. Vigilance societies may consist of representative persons either of one community or of several communities taken together?

A. I do not think it will work.

Q. Are there no public men who will be prepared to take up this work at the sacrifice of unpopularity?

A. No.

Q. What is the objection to the proposal about the registration of marriages.

A. None. That will also be a help in a way.

Q. To whom should the report be made?

A. To the Registrar of Documents.

Q. Not to the Tahsildar or executive officer prescribed by the proper authority.

A. There is no harm in that also.

Q. Would you recommend that in case of every such marriage a certificate should be issued by the registering authority to the parties to the marriage stating the facts of the marriage and other particulars?

A. Yes, that will be a useful evidence for disputes thereafter about the age.

Q. Would you recommend a similar certificate to be issued when a report of birth is made so that the parties might have a certificate for future use?

A. Yes, even now it is obtainable.

Q. How long are birth registers retained?

A. I asked for my birth entry but I was told that the records have been destroyed. They have got records of 49 years.

Mrs. Nehru: You were referring to the panchayats of all communities. If the right of complaint is given to caste panchayats, will that work?

A. I do not think you will find people competent to deal with these questions.

Oral Evidence of Dr. E. D. SHROFF, Medical Practitioner, Karachi.

(Karachi, 1st October, 1928.)

Chairman: Are you health officer of the municipality.

A. Yes.

Q. For how long?

A. For the last 7 years.

Q. As health officer is it your duty to register births and deaths?

A. Yes.

Q. Have you got statistics of deaths containing a column of the age of the deceased?

A. Yes. The witness at this stage submitted statements.

Q. I understand registration is obligatory here. Is penalty attached to the non-conformity of the registration of births?

A. Yes, everybody is bound to report it within 48 hours.

Q. Have you many cases of prosecution?

A. Yes, a large number because our system of detecting non-registration of births and deaths is very perfect so much so that the Health Commissioner, Bombay, on his last visit was so satisfied that he sent his health officer to study the system.

Q. The municipality is also connected with maternity homes?

A. Yes, I have got 3 maternity homes which are run by the municipality themselves.

Q. Do you keep any register of that?

A. Yes.

Q. Could you for instance say in confinement cases that come to the place the ages of the mothers?

A. Yes, I can give you.

Q. How many cases of maternity have come?

A. It must be about 500 in each house since it was started.

The witness at this stage explained the registers kept for the purpose.

Dr. Beadon: Could you tell us if you have any cases of osteo-malacia?

A. Yes.

Q. At what age do they occur?

A. At 14 or 15.

Q. How many cases can you remember?

A. I remember 2 cases which were at 14.

Q. Did it occur in these 2 cases on child-birth?

A. Yes.

Q. Have you seen osteo-malacia occurring apart from child-birth?

A. No.

Q. Were those cases in Hindus or Mohaminadans?

A. Both were Mohaminadans.

Q. Were these people badly off?

A. Yes, they were poor.

Q. They could possibly not get enough food to eat?

A. Yes.

Q. Were the children born alive?

A. It was reported that in both the cases the children died.

Q. Do you know apart from these 2 cases that early marriage has been detrimental to the mother?

A. Many cases. I have seen in one case that the ligaments were so injured that she was not able to leave her bed for 2 years.

Q. Have you seen any cases of tuberculosis occurring after early child-birth?

A. Yes, many cases. These cases come into my tuberculosis dispensary.

Q. Do you think that the vitality of the girl mother is more injured than the vitality of a woman of 18 having first child?

A. Certainly.

Q. Are you quite definite about that?

A. I am absolutely certain.

Q. Have you met cases in which women after having one or two children become sterile?

A. Yes, at times.

Q. Are those cases associated with venereal disease or are they apart from it?

A. Not all cases.

Q. Have you met with sterility as a result of child-birth?

A. Yes.

Q. Have you seen cases mismanaged by dais?

A. Yes. Such cases get fever of long duration and also result in sterility?

Q. Owing to early conception and early maternity has the outcome been sterility?

A. Yes.

Q. How many cases have come to your notice.

A. I have seen more than half a dozen cases within the last 10 years.

Q. Are they confined to any particular community?

A. No.

Q. Have you personally come across cases of early consummation which resulted in serious injury to the girl? Some people have told us that hemorrhage occurred?

A. Yes, they get hemorrhage.

Q. Do many cases result in serious injury?

A. Yes.

Q. How many cases.

A. A large number of cases. In my dispensary such cases come very frequently because we have an out-door department attached.

Q. By a large number you mean 10 cases a year?

A. I mean the proportion of cases coming at early age are not very many, but whatever come they are greater. Supposing there are 12 such cases of early consummation, out of these there are at least 4 who get hemorrhage.

Q. Do you get 12 cases in a year?

A. I cannot say but I can get you figures from the records.

Q. Have you got a very large number of early marriages?

A. There is a certain class here in Ranchor Lines and Leari quarters, among whom early marriages are very common.

Q. What do you call early marriage, at 8, 9, 10?

A. Also 12.

Q. Does consummation take place immediately after marriage?

A. Yes.

Q. What proportion of these people live in these quarters?

A. One-third of the population and they are all poor. During the last census the population of Ranchor Lines was 2,000 and that of Leari 44,000.

Q. Among those 44,000 what proportion would you say were married at the age of 10 or 12?

A. That is difficult to say.

Q. Would you say a large number or a small number?

A. Comparatively small number.

Q. Have you met cases in which children were affected?

A. Yes. They generally get rickets and marasmus.

Q. Do you find infant rickets and marasmus among children of early mothers?

A. Yes.

Q. Have you found that as the mother progresses or grows older the children become stronger than those born earlier? Supposing a girl is married at the age of 12 and she gets the first child at 14 and the next at 16 and so on. Have you noticed that the second child and the third child are stronger than the first one?

A. No.

Mrs. Nehru: Can you tell us whether there is any difference between the health of the second born child as against the first child in the case of early married mothers?

A. There is no difference. The first born child is just the same as the later born children. I have also found that when the first child is being nursed she conceives again. It does not affect the child, but it tells upon the constitution of the mother because the child goes on thriving at the cost of the mother. The spacing of pregnancies is too quick.

Mr. Bhargava: But this spacing of pregnancies is too quick in every case, this is not particularly true of early married mothers. This has no reference to age.

A. I am advocating 18 years as the age of marriage in order to enable the body and constitution of the girl to be fully developed for motherhood.

Q. Do you think there will be injury at 16?

A. There need not necessarily be any injury to her body but it will wreck her constitution.

Q. But the danger of injury is not such that she should not be allowed to marry.

A. The parts are not so developed as to have normal labour. There may not be injury, but ultimately results are disastrous.

Q. But considering that there is this custom of early marriage in general among Indians, don't you think that 18 would rather be a big jump and people would rather be astounded?

A. I don't see. People are getting educated. There may be some little difficulty. We are lagging behind in social reform.

Q. But in view of the fact that I just stated, would you be satisfied with 16?

A. Something is better than nothing.

Q. You said that the registration of births and deaths in Karachi is almost perfect. Is this your opinion about the rural areas also?

A. I could not say about rural areas. Of course if they wanted to have it they could have it as perfect as in Karachi. The powers are there. Under the Bombay District Municipal Act the bye-laws can be framed. There is no obligation on the parents or guardians to report the birth. The power is there, but the bye-laws have not been framed.

Q. In Lahari, you say, there is a population of about 44,000. What is the population of Mohammadans out of this?

A. The population is preponderantly Mohammdan.

Q. Is this system of early marriages prevalent amongst the Mohammadans also?

A. Yes.

Mr. Mudaliyar: What is the penalty for non-registration?

A. Up to a maximum of Rs. 25 fine. The obligation is laid on the parents, guardians and the neighbours. I mean the man living in the second storey is bound to report a case of birth occurring in the family of the occupant of the third storey or the first storey.

Q. If the house has no storeys?

A. That is under the rules. The obligation is mainly on the parents and guardians. The medical officers in charge of the dispensaries, the mid-wives and parents are all liable to prosecution, if a case is not reported.

Q. But you have no registration of dais here.

A. We have got a list of dais.

Q. What is the system that you follow for registration purposes? How do you arrange for registration?

A. We have got six registration centres which are attended from morning till night.

Q. Within how many days has a birth to be reported?

A. 10 days in the case of birth and 24 hours in the case of death. I may just add that in addition to the registering centres we have got what we call Kurkaoms. Their duty is to go from one burning ground to another and note the deaths that have taken place. As regards the births they have to visit each and every day in rotation, and see that no case is left unreported.

Q. When a baby is born the name is not given immediately. How do you enter the name?

A. We have got a very good system. After 6 months every baby is vaccinated and at that time the name is usually given and then it is entered in the vaccination register. This register is cross-referenced. These birth and vaccination registers have been maintained for 40 years. As a practice we are keeping them.

Mr. Kadri: May I suggest that another column be added in the birth register giving the name of the child. That can be done at the time when the name is entered in the vaccination register. That will avoid reference to the vaccination register?

A. That is a good suggestion.

Q. There may also be a column giving the name of the mother.

A. No, but the mothers do not like to give their names. Indian ladies won't give their names easily. When asked about the names they will simply close their doors. That has been my experience.

Mr. Kanhaiya Lal: We have been told that between the ages of 10 and 15 and between 15 and 20 the percentage of deaths amongst females is double than that of males. Is that so in Karachi?

A. I don't think so.

Q. We have been told that the death rate among Hindus is much larger than among the Mohammadans.

A. It is not so in Karachi. In Karachi Mohammadan mortality is more than the Hindus. This is due to stress of life. Mohammadans are poor people.

Q. According to the figures among Jains there has been no mortality in the year 1926-27.

A. It is a very small population.

Q. Is early consummation before puberty not common?

A. Early consummation is common among Hindus and it is not so among Mohammadans.

Q. What about infant mortality?

A. One year it is higher among the Hindus and another year it is higher among the Muslims. You therefore cannot say.

Q. In spite of the fact that there are 6 or 7 maternity centres, infant mortality, according to the returns has been rising. What is this due to?

A. But our population is tremendously increasing. For every 15 deaths before we have now got 42 deaths. Registration of the causes of deaths is not so perfect. Infant mortality has been reduced by three.

Written Statement, dated the 4th September 1928, of Mr. VIRUMAL BEGRAJ, Representative of the Hindu Panchayat, Sukkur, Sind.

1. Yes, mainly in the educated Section of the Province of Sind.

2. Public opinion has progressed. Female education is making strides. High female education is advancing. The "Dayanram Jethmal Arts College" at Karachi has, owing to the efforts of and the example set by Principal S. C. Shahani, M.A., whose three daughters have graduated, promoted high female education. The ladies coming out of this College as well as the Society in

general have created an awakening among the people of the injurious effects of early marriage, as affecting the individuals and the promotion of the National cause. People are now coming to believe, that unless the females are admitted as equal partners, the National cause shall not advance. Hence, the intelligentia of the Province think, that an advance should be made on the present law.

3. Cases of seduction or rape are not frequent. Nevertheless, they do crop up now and again. The fact, that the Age of Consent has been raised to 14 *quo ad* cases outside the marital state, is not known generally.

4. The amendment of 1925, raising the Age of Consent within the marital state to 13 is not generally known. But, the awakening referred to in answer No. 2 has raised the age of marriage and of the consummation of marriage. Cases, in which girls below 13 or 14 years of age, are married are few and far between, while those, in which girls are married at the age of 16, 17 or 18 are becoming more numerous every day.

5. At 14. The menstruating of a girl is considered to be proof of her having reached puberty.

6. Cohabitation, (1) before puberty, (2) soon after puberty and (3) before a girl completes the 13th year of her age are common among the uneducated classes, because early marriage is prevalent among them. Such cases do not, as a rule, go to Court.

7. No. It is due to custom, which originated with religious injunction. The old idea was, that girls should be married even at the 8th year of their age. But, this practice is dying out.

8. No.

9. No. In my opinion, 16 is the least age for the consummation of marriage, though it would be more proper to wait till the age of 18.

10. At 18. In some cases, a girl may give an intelligent consent at 16.

11. Cohabitation before puberty is most injurious. After puberty but before full physical development of a girl is less injurious to her as well as to her progeny. Cases, in which a married girl gives birth to a child at the age of 14 or 15 are numerous. But, in such cases, the physique of the forced mother becomes weak, while the progeny is of a poor type. In several of such cases, the girl dies at the first child-birth.

12. I certainly do consider, that early consummation and early maternity are responsible for high maternal and infantile mortality as well as for the national deterioration.

13. There has been further development of public opinion in this part of the country in favour of the extension of the Age of Consent in marital and extra-marital cases since the amendment of 1925. No awakening can be a better proof of such development of public opinion than among the women of this Province, led by such ladies as Mrs. Rupchand Bilaram, Mrs. Hardevibai Atmaram, Mrs. Pramulla Dalmal, Mrs. Damyanti Devi and Miss Dâbreo. Recently a conference of ladies was held, where it was resolved, that the Age of Consent should be raised to 16, that males should not marry before 21 and females before 18. This development is general.

14. Not now-a-days.

15. As a matter of abstract principle, difficulties must be experienced in determining the age of a girl in cases cropping up under Sections 375 and 376, I. P. Code. Among the higher Hindu classes, horoscopes of girls are prepared on the sixth day of a girl's birth. In Municipal boroughs, the births are reported to and registered in the Municipal Office. But, such is not the case with the lower classes of the Hindus nor with the Mohammadans. Nor are the horoscopes carefully preserved, as in the case of sons. To minimise this difficulty, I would propose, that every marriage should be reported to and registered, in Municipal areas, in the Municipal Office and in non-Municipal areas at the Tapadar's Office.

16. Certainly, it would, because the appearance of the girl would form evidence of her approximate age.

17. I am decidedly in favour of the discrimination of marital and extra marital offences, so far as the punishment is concerned. The discrimination existing in the present Section 376 of the I. P. Code answers, in my opinion, the required purpose.

18. I would suggest no differential procedure. But, I am strongly opposed to the proposal, that the trial of marital cases should be entrusted to First-Class Magistrates. The existing provisions, as existing in Schedule II to the Criminal Procedure Code, are suitable. A Section may be added to the Criminal Procedure Code, empowering the *Sessions Court* to hold the trial *in camera*.

19. No.

20. Legislation fixing the minimum age of marriage is more in consonance with public opinion and would be more effective and less embarrassing than penal legislation fixing a higher Age of Consent for marital cases. An embargo on marriage before a certain age would include the restriction on the consummation of marriage.

21. Reliance on social reform by means of social propaganda and education is completely out of the question at the present day. The object in view is the renaissance of India. This object can be achieved only by raising the people morally, physically and intellectually. Political progress shall follow in its train. Hindu India and Muslim India have much too long been under the baneful influence of the priestcraft. If Kamal Pasha has in new Turkey resorted to legislation to revive Turkey, the same means are necessary to free India from the subjection of the priestcraft. Owing to financial difficulties, primary education shall necessarily be slow of progress. The State and a *priori* legislation is the only *modus operandi*, that can be effective for the attainment of the object in view.

Oral Evidence of Mr. VIRUMAL BEGRAJ, Representative of the Hindu Panchayat, Sukkur.

(Karachi, 2nd October, 1928.)

Mrs. Beadon: Are you the representative of the Hindu panchayats?

A. Yes.

Q. What is the membership of the panchayats?

A. It is virtually 25,000 Hindus. They have got a regular body. There is a managing committee consisting of 31 members and I am on the managing committee.

Q. Do you hold annual meetings or conferences?

A. Usually we meet on holidays to consider and carry on social reforms.

Q. May we take it that this statement of yours is a considered opinion of the managing committee of that panchayat?

A. Yes, I am speaking for the managing committee.

Q. How long has this panchayat been in existence?

A. Since the people have settled down in Sukkur.

Q. Where did they come from?

A. Sukkur is a new place and people have come from Larkana and Khairpur.

Q. Your activities bring you into intimate relation with the Hindus?

A. Yes, I am a social reform worker and the editor of the paper "Sindhi".

Q. Have you got anything to do with the Mohammadans?

A. Much less. So far as political and social reforms are concerned we join hands with Mohammadans but so far as this particular subject is concerned we know of the Hindus.

Q. Why is it that this particular subject does not affect the Mohammadans?

A. It affects the Hindus more.

Q. You say there is some dissatisfaction among the educated classes. What is that dissatisfaction; do they want the age to be raised?

A. Yes.

Q. Is there anybody which wants the age to be lowered?

A. No.

Q. What is the average age for marriage now in Sukkur?

A. Generally 13 or 14 for the girls.

Q. We have been told that there is a great deal of child marriage in certain parts of Sind and girls are married at the age of 8 and 9?

A. No, I think it is disappearing now. It may be in distant villages. Generally in villages also marriages do not take place before 14 or 15 years. There may be early marriages in Shikarpur but in Sukkur there are none or very very rare.

Q. Is that among all communities?

A. Yes.

Q. You say that among the uneducated classes cohabitation is not uncommon before puberty. What proportion of the uneducated classes there are to the whole?

A. I will rather say 60 per cent. are uneducated.

Q. You say cases do not as a rule come to court. Is it because they do not know the law?

A. The point is that they do not know the existence of the law and some people marry early because they have to dispose of their girls. If at all there is any case they try to hush it up.

Q. But why do they hush it up?

A. Because the girl will suffer more than the guilty person himself. She will not be accepted as readily as she would be accepted otherwise. These cases are taken to societies privately and made up.

Q. Do you think societies would try to help in this matter?

A. Yes, they do considerably. Sometimes there have been instances. We have come across certain instances where the girl has been married to the very man with whom sexual intercourse was carried on and it had come to the notice of both the parties.

Q. You are talking of extra-marital cases of rape?

A. I was speaking of cases in which marriage has taken place. They do not come under observation.

Q. Have you any knowledge of any cases in the last five or six years in which early consummation has resulted in injury?

A. I know one in Sukkur and one in Shikarpur.

Q. Could you tell us the ages of those girls?

A. The time she delivered she was 13. The lady doctor who came to examine was much distressed about the condition and complained about the conduct of the husband. The girl died. This is within my personal knowledge.

Q. Did both the girls die?

A. Yes.

Q. How long ago was that?

A. This was 4 years ago.

Q. To what communities did those girls belong?

A. Both these were Hindus. Sometimes we come across cases of those people who marry at an advanced age of 40 or 50 a second or third wife who is a young girl and then consummation takes place.

Q. Why do these people marry young girls?

A. Because widow remarriage is not allowed by our society. They having lost their wives have to marry at the age of 50 because they have no issue. They therefore go in for a girl and pay money and get a girl of 10. Men of decent life would not like to give their daughters to such men, they have therefore to go to low class people who under temptation of wealth give their daughters.

Q. Then the girls are sold!

A. It comes to that.

Q. Have you seen cases in which early motherhood is attained?

A. They are very weak and the children of the girl mothers remain very weak for 6 or 7 years.

Q. You mean to say that they are born weak and remain weak?

A. Yes. Naturally we have got more deaths in Shikarpur and the death rate of children of girl mothers is very very high. It is more than in Sukkur.

Q. Why is it so?

A. Because of the early marriage and early consummation. If you compare the health of Sukkur and of Shikarpur there is a vast difference. The death rate at Sukkur is lower than the death rate at Shikarpur.

Q. Could you give me any idea what the death rate is at Shikarpur?

A. I have not got figures. About 4 years back it was bad and we started a maternity home because we found that about 20 per cent. of girls died after confinement. There was a great cry and we started propaganda work and there has been much progress during the last 4 years.

Mrs. Brij Lal Nehru: Would you tell me why is there so much difference of death rate between Shikarpur and Sukkur? Is it because you have maternity homes at Sukkur?

A. Yes. Now the death rate at Shikarpur is decreasing on account of maternity homes.

Q. Have you experience of Sukkur and Shikarpur only or other places in Sind too?

A. In Hyderabad they marry at 15, 16 or 17. The girls are educated and do not marry early.

Q. Is this difference in the marriageable age of girls according to localities or communities?

A. There are certain communities which are very poor and receive no education; their marriages take place earlier.

Q. Do localities make any difference?

A. So far as early marriage is concerned Hyderabad is very advanced.

Q. Has the marriage age advanced among all the communities residing in Hyderabad?

A. No, only among educated people.

Q. Were those two instances that you gave of young girls of second wives?

A. Yes, both were second wives. One was a case at Sukkur and the other at Shikarpur.

Q. You say such cases go to societies. By societies do you mean panchayats?

A. Yes.

Q. What sort of cases do they take up generally?

A. If there is any rape or anything of the sort. If there is any mischief done with unmarried girls they are hushed up.

Q. Are those societies official bodies?

A. No.

Q. Then under what authority do you try these cases of rape?

A. Two or three people are selected from amongst the 31 members of the managing committee. We send for the relations of both parties and bring

about a compromise by payment of some compensation or carry on the marriage between the girl and the boy. If the man is already married we make him pay some penalty and repent.

Q. That is to say you try to save him from going to court?

A. In a way but the father of the girl does not want it to be taken to court at all.

Q. Do these panchayats belong to one particular community?

A. It is composed of almost all communities; it is a territorial thing.

Q. There is one panchayat for the whole city of Sukkur for the trial of these cases?

A. Yes.

Q. Have you tried many such cases?

A. I think 2. One girl was 25 years old.

Q. How long has this panchayat been in existence?

A. 50 years.

Q. Have you had any case occurring in that locality within marital relation?

A. Yes, there are.

Q. Do they come with complaints before you?

A. If the girl is very much injured before puberty which usually happens then these girls undergo treatment. We as social reformers and workers if we come across such cases try to serve them in some way.

Q. Why do not these cases come even before panchayats?

A. Because she being the wife of a man has to put up with her husband.

Q. Is general public opinion against this consummation before puberty?

A. Public opinion is progressing.

Q. If it is progressing why cases do not come to you leaving alone the courts?

A. It is a domestic affair and relations of the wife would not like to injure the feelings of the husband.

Q. What is the use of raising the age then?

A. These are rare cases; people are progressing.

Q. Supposing marriage legislation is not possible and conditions are as you describe them what would you suggest to prevent them?

A. If you try to arrange with the vaccinators and municipalities and if you try to advertise it would keep off husbands who marry early but do not know the law.

Q. If everybody knows of the provisions of the law, even as it stands, will it work? Will cases come to light?

A. They will be very few but there will be very great improvement.

Q. Would you suggest any alteration in the provisions of the law to facilitate its working?

A. The present law and the penalty is all right. I would suggest that cases may be tried by Division Benches or by Sessions Judges in camera.

Q. Do you think special judges should be given this work?

A. Yes, or Sessions Judges.

Q. The rest of the procedure should remain as it is now?

A. Yes.

Q. Would you like any changes in punishment?

A. No, it is sufficient.

Q. In paragraph 3 of your statement you say that the marriageable age has been raised on account of this amendment of 1925. If it is so little known to people how has it effected the marriageable age of girls?

A. It is not known to those who are not educated. That is why I say it should be advertised.

Q. Those who have known about the existence of this law, have they in your opinion postponed marriages on account of it?

A. Yes.

Q. Is that spirit working independently of the law or is it working with the help of the law?

A. That spirit is also working but the help of the law is considerable.

Q. You have said that marriageable age is going up to 16, 17 or 18. Is it in villages or towns?

A. It is in the towns.

Q. But not in villages?

A. In villages it is 14, 15 or 16.

Q. Which are the particular classes among whom cohabitation is common before puberty?

A. It is only the poorer classes of people who marry a second or third wife.

Q. Then you would not call it common?

A. They are very common.

Q. What would be the proportion of such marriages?

A. Hardly 3 per cent. to 5 per cent. of the total marriages. Sometimes I find girls are very strong. I know the case of a girl who is educated and is in the training college. She was nearly 15 years when she was married and would not allow the husband to touch her unless she reached the age of 18. The man was so mad that he married another. The father of the boy is the richest man and the father of the girl is a public prosecutor. Both having carried on the marriage, the girl opposed. She went to school and is now receiving higher education. The man is now anxious to have her.

Q. Which community is that?

A. One is Amil and the father of the boy is a bania merchant.

Q. Are amils also from banias?

A. Whosoever is educated is called an amil.

Mr. Bhargava: You have said that men of advanced age marry girls of young age and there is so much hardship. This is generally due to unequal marriages. Would you like to have a law prohibiting such marriages?

A. Yes, such marriages should be stopped. I would suggest that the difference between the two may be fixed at 5 years.

Q. You say that much of this trouble is due to the fact that people do not know much about the law. What measures would you suggest for the publication of the law?

A. Vaccinators who go to visit children within six months should be made aware of this because they have to see the mother of the children and can explain to them. I would make it popular through the municipalities and panchayats.

Q. Is there a panchayat in every town and village?

A. They are both in towns and villages. If these village panchayats are made aware of the law and if it is widely circulated in different languages, it will do a great good.

Q. I want to know the organisation of these panchayats. Is there a system of election of members?

A. Yes. Suppose the father dies another brother or son or cousin takes his place and these organisations exist all over Sind. In village one man is made *Mukhia*.

Q. Are not there party-factions in villages and towns?

A. Yes, there are; there is some jealousy but still the panchayat work goes on well. When one man is elected as a *mukhia* he is respected by all.

Q. I understand that these panchayats are caste panchayats?

A. Not necessarily, they are trade and caste both.

Q. Are Mohamadans also members of these panchayats?

A. No, I am talking of Hindu trade panchayats.

Q. Have Mohammadians got panchayats?

A. I do not think so.

Q. So that in one place there might exist half a dozen panchayats according to castes and trades?

A. There is one big panchayat representative of all and then there are smaller bodies. The representatives on the big body are elected from the smaller bodies.

Q. How are the decisions of this big panchayat enforced?

A. They are accepted and not enforced. Suppose one member complains against other and if you do not abide by their decision they will write to the panchayat to which you belong and that panchayat will take action to punish you.

Q. This applies so far as trade questions are concerned. If caste questions go to the panchayat how are their orders accepted?

A. Bhatias have got their own panchayat, Brahmans have got their own and similarly other castes have one. Brahmans are very few and their caste questions are determined by their own panchayat.

Q. Do you realise that a first class magistrate has to commit the case in the first instance?

A. There are cases which are tried by sessions judges as well.

Q. But they are committed to the sessions by first class magistrates. So that the very thing which you do not want will come in the case.

A. I wish it should not be taken to the committing magistrate.

Q. Should I understand that you are opposed to any trial by a first class magistrate?

A. Yes.

Q. You want that the case should go directly and independently to the sessions judge.

A. Yes.

Q. Or by some special magistrate appointed for the purpose?

A. Yes.

Q. So far as Sind is concerned are district magistrates generally Europeans or Indians?

A. Generally Europeans.

Q. Would you not like that an Indian should try cases of this nature?

A. Yes, if a special magistrate is appointed to do this work I would prefer it.

Q. Would a first class magistrate specially empowered in this behalf do?

A. Yes.

Q. You think that the police should not interfere. Even now these offences are not cognisable. Would you like to give this power to report these cases to the parents or guardians of the girls?

A. No, parents and guardians would not like to report these cases. If social reform workers are empowered they will do much better.

Q. If some society in each place is empowered to look into these affairs will it serve well?

A. Yes.

Q. They should have the power to complain and nobody else?

A. No.

Q. You have got such a good organisation in Sind but in other parts of India such organisations do not exist. Whom would you give the power there?

A. I think head munshi of the taluka or some responsible magistrate would do.

Q. Would you like the district magistrate to be empowered to give previous sanction to the prosecution of such cases?

A. Yes, that would be better. I have said that first or second class magistrates may be empowered to carry on the enquiries under the orders of the district magistrate or sessions judge but police should not be empowered.

Q. Do you think that even now all the classes including mahajans in which early marriage is prevalent are progressing and they will have no objection if the age of marriage is fixed at 16?

A. I think some might still object.

Q. So to start with would you not be satisfied with 15 years?

A. Yes, 15 or 16 but 16 would be proper. The educated people are going far ahead; they are marrying at 20—25.

Q. You say that girls attain puberty at 13 or 14 and according to Shastras a girl has to wait for 3 years after puberty which comes to 16. Therefore fixation of the age at 16 both in consonance with the Shastras and the state of society. Is it so?

A. Yes.

Q. I understand that you want the age of 18 to be the Age of Consent in non-marital cases?

A. Yes, in marital cases it should be 15.

Q. You have said that you like the age to be 18 so far as non-marital cases are concerned. According to you the age should be 3 years after the attainment of puberty. But since you say a girl attains puberty at 13, it will be 16. Thus according to Shastras the age should not be 18 but it should be 16? Is it not?

A. Yes. The Hindu Shastras say that the age of 16 is the least age for marriage; the maximum age should be 24.

Q. I understand that you would like the Age of Consent in non-marital cases to be 17 to start with?

A. It will be harder. I am speaking from the point of view of the people.

Q. But considering all points, you are satisfied with 17?

A. Yes.

Q. You have mentioned that the conference of ladies passed a resolution of 18 and 21. When did it take place?

A. I think it was 9th of September.

Q. Who should be regarded as offender? Would you regard the parents as abettors of the crime?

A. Not parents.

Q. Would you like the boy of more than 18 years and less than 21 to be regarded as an offender and flogging administered to him?

A. Yes, looking to the nature of the offence he has to be punished.

Q. Would you like flogging?

A. No, it will be very hard.

Mr. Mitra: Will you kindly tell us if there is any religious notion among the illiterate classes in your province that the marriages of girls should take place within a certain age?

A. There is the priest class who still holds this opinion that girls should be married away at 8, 9 or 10 years. They actually repeat *mantras* at the time of marriage even now which means that at the age of 8 a girl is not a girl, at the age of 9 a girl is not a girl and at the age of 10 she is only a

girl. She should be married away before 10. Brahmans still hold it but that notion is dying out because educated people do not care and bania do not respect it.

Q. In answer to Question No. 7 you say it is due to custom. Is it only a custom and do you hold there is nothing religious in it?

A. No, because according to religion she has to be married between the ages of 15 and 21.

Q. Is it not true that even among the lower classes or illiterate classes the notion is dying out?

A. Yes, to a great extent.

Mrs. Borden: Is there any movement in your part of the country about widow remarriages?

A. To some extent. We are working against opposition and are carrying on widow remarriages.

Q. In Bannu one witness told us that widow remarriages were very common. He said that every adult widow is remarried. How many do you marry here?

A. In the villages surrounding Shikarpur if a woman loses her husband she is actually married away to the husband's brother or cousin privately. That is only done in villages. In cities there is great restriction; people would not like remarriages till she becomes very desparate or runs away. Now the spirit is growing, societies are passing resolutions and ladies' conference passed this resolution. It was carried unanimously.

Mr. Mitra: Do you find much disparity in number of males and females in this Province?

A. Yes, people go to marry in Bengal and other places. They have got an ashram at Calcutta and people go from here and marry there. I have seen 30 Bengali girls married here. No religious ritual takes place. They have got a custom of Aru and they perform some sort of ceremony. It is registered in court.

Q. Will it be true to say that because of these large number of young widows there are more cases of rape and enticement in this part of the country?

A. There are some cases in the Shikarpur district; but they are more or less with consent and are therefore not rape.

Q. Do you feel that the Age of Consent in non-marital cases should be the age at which girls attain discretion, i.e., 18?

A. I have suggested 16.

Q. You might be aware that according to law the age of majority is 18 and this has been fixed with the view that it is the age at which persons are expected to attain the age of discretion. Do you not therefore think that the Age of Consent in non-marital cases should be the age of majority, i.e., 18?

A. The age of majority would not help us very much.

Q. At present our women have not got proper education, and they are in a most hopeless condition. We should therefore at least provide that in non-marital cases there should be certain safeguards. Would you therefore say that the Age of Consent outside the marital state should be at least 18?

A. I cannot be certain about that. I think 16 is all right. Looking to the opinions at issue, we have got to compromise.

Q. As regards marital relations I understand you. But is not the case different with the non-marital state and would you not therefore consider that a sufficiently higher age should be fixed in such cases?

A. I agree.

Q. Is there any notion among the illiterate classes that as soon as a girl attains puberty there should be consummation?

A. Yes.

Q. Do you agree with that view?

A. I object to it. In my opinion some two or three years must pass before consummation takes place.

Q. Do you feel that because of this legislation about the Age of Consent the age of marriage and the Age of Consent are rising? Do you think that this legislation has been effective indirectly?

A. The Age of Consent law is not known to people at all. Hardly 1 or 2 per cent. of the people are aware of the existence of the law.

Q. Is it then due to the general advance of education in the country?

A. Yes; and not because of this legislation.

Q. Do you not feel that this legislation backed by public opinion would do good?

A. Yes.

Q. In answer to Mrs. Nehru you said that the laws are all right, but that you wanted some changes. Do you mean any change in the punishment?

A. No; I would have the punishment as it stands.

Q. As regards procedure do you not feel that a married girl should have protection in the matter?

A. I agree that the trial of the girl is delicate; but husband or outsider it makes no difference in my opinion.

Q. Can you tell us the Shastraic authorities where you find that the marriage for Hindu girls should be over 16?

A. I cannot say, because I do not know. I am only a social reformer.

Q. With reference to the illiterate people amongst whom early marriage takes place, the practice is that immediately after the marriage the girl is sent to the house of the husband and consummation takes place. The parents of the girl know that such consummation will take place when they send the girl to the house of the husband. But why do you in such cases exempt parents from being punished for this offence?

A. I only exempt parents when the boy is over 18.

Q. The boy is punishable in any case if the girl is below a certain age.

A. I said clearly that if the boy is grown up the parents should not be punished.

Q. Suppose the girl is married at 10 or 11. The parents of the girl give her in marriage to a grown up boy or an elderly man of 30. Immediately after the marriage the girl is sent to the husband's house, and the parents of the girl know that consummation is bound to take place in such cases. Have not the parents abetted the crime? Why should not they be punished?

A. In cases in which the man is grown up the man pays money to the parents of the girl and gets married. In my opinion it is the man who has consummation with the girl who is responsible and not the parents.

Q. You have said that marriages should be registered. Do you think that there would be any objection from the Hindu community?

A. There would be opposition. In this connection I wish to correct myself and say that we should wait for about 5 years and then we should take this legislation up.

Mr. Kadri: You talk of high infantile mortality amongst the people in Shikarpur. Is it amongst Muhammadans or Hindus?

A. It is far more amongst Hindus than amongst Muhammadans. The proportion of deaths is about 7 Muhammadans and 27 Hindus. The reason for this is early marriage and luxury. In the families which live a luxurious life puberty comes a little earlier, because the girls see their brothers and sisters live a married life. These people die because of early marriage and luxurious habits. Muhammadans are not given to these habits.

Q. Do you think that sufficient time has elapsed since the passing of the Act of 1925 to warrant a further rise in the Age of Consent?

A. Yes; in these two years education has gone on spreading to a great extent. The tendency of modern girls is more towards education and progress.

Q. Does public opinion demand a rise in the Age of Consent?

A. Yes.

Q. You referred to the public prosecutor's daughter-in-law. What was her age when she was married?

A. She was married at 16 and her husband was about 18.

Q. Was the separation due to her desire to delay the consummation of marriage?

A. Her brother, being educated she got that impression in her mind that early marriage was bad and going to a husband was equally bad. She did not object at the time of the marriage; but later on she objected to the consummation. Subsequently she would not accede to the husband's wishes. She is now receiving education and qualifying herself to be a school mistress. Her husband is very rich. Her father-in-law offered her many things, but she would not have sexual intercourse. She does not want money but education. She is now in the Training College, Hyderabad.

Q. You talk of panchayats deciding these questions. Do they exist in important centres in Sind?

A. Yes.

Q. Are they recognised by the Government?

A. They are not officially recognised by the Government, but they are respected by the Government. If Government officers send for representative men from these panchayats and tell them that they should help them in any way they would do so.

We deal with all kinds of cases in our panchayats. In a certain case, we fined a man 100 rupees and the amount was paid by him on the spot. If he had failed to do so, social pressure would have been brought to bear upon him.

Q. Is the panchayat elected by the people?

A. Firstly there is the Dal panchayat. We send notices to all places to the effect that there will be a Dal panchayat. People gather in large numbers from all places and elections to the panchayat take place.

Q. In paragraph 6 you say that cohabitation before puberty, soon after puberty and before the girl attains 13 years of age is common. May we take it that cases of cohabitation before puberty are very rare?

A. Yes.

Mr. Kanhaiya Lal: Do you belong to any profession or business?

A. I am the proprietor of a printing press, and the editor of the paper "Sindhi". I am at present President of the Provincial Hindu Sabha, Sind, as well as President of the Sukkur District Hindu Sabha. I am also President of the Sukkur District Congress Committee. Also I am Chairman of the Standing Committee of the Municipality.

Q. What is the number of people who form the panchayat?

A. The panchayat consists of 31 people and the executive body consists of 11.

Q. Is it confined to Hindus only?

A. Yes, only 10 Hindus.

Q. Is it of a voluntary character?

A. Yes.

Q. Is there a village panchayat Act in Sind?

A. Every village has got a panchayat, but there is no village panchayat Act. There are only voluntary panchayats. In July last we called a grand panchayat with a view to reorganise the panchayats and constitute a central body. We are still working at it.

Q. What are the functions of these panchayats?

A. The functions are: supposing there is a marriage and the father of the girl pays more to the bridegroom than is fixed, then he is punished. The bridegroom's father on his part should not trouble or harass the bride's father. We deal with such marriage cases in our panchayats.

Chairman: Do you deal with caste questions?

A. Yes, but it is very rarely that such questions come before us. We deal with marriage questions generally and trade questions also.

Q. You deal then with marriage, trade and caste questions.

A. Yes; preliminary notes and such like business dealings also go to the panchayats. In fact we are doing all that Government courts do.

Q. In the cases which you are asked to decide, do you take agreements from the parties? What is the procedure you adopt?

A. Supposing we receive a complaint, we send it on to the accused and ask him to appear before us. When the parties appear before us we ask them whether they would like the decision to be arrived at by the whole body or by a small committee. When both the parties agree to a certain number, the case is taken up and decided.

Q. Is the agreement, supposing there is one, stamped or unstamped?

A. It is sometimes stamped, and sometimes unstamped.

Q. Do you make a written award?

A. Yes, sometimes we do it on stamp.

Q. Do you maintain a register of these disputes?

A. We have got minute books, containing the proceedings. Once a man went wrong with a widow. She was the complainant. We wrote out the case in the minute book.

Q. Do you keep a staff for the purpose of issuing notices, etc.?

A. We have got one panchayat Munshi who does everything for us. When a case is going on, one of us usually writes the proceedings. The Munshi does his work entirely voluntarily.

Q. When a man is fined, do you pay it to the other side or do you keep any part of it with you?

A. We have got one panchayat Munishi who does everything for us. When party who is the offender, to deposit a certain amount of money with us and we keep this amount with us. We usually take the maximum amount from the accused. We take this precaution so that we may be able to pay something as compensation to the injured party and cover any expenditure in connection with the case.

Q. Do you keep accounts?

A. Yes; sometimes we keep accounts with the co-operative banks; sometimes we keep the money with the Makhi.

Q. Can we make use of your panchayats to make the law of the Age of Consent effective? Will these panchayats act as vigilance societies?

A. Yes, if they are armed with powers and trusted, they would help a great deal.

Q. Now as regards marital offences is there not a certain amount of sympathy with the husband, if a case is brought against him?

A. There is less sympathy with the man and more sympathy with the girl.

Q. Only if the girl is injured?

A. Then it is altogether a different thing and these things will not apply at all.

Q. Supposing the Age of Consent within the marital state is raised to 16, do you think there would be more cases of infringement of the law than those that are now brought to light?

A. I think there will be fewer cases.

Q. Is it your idea that the dread of punishment will prevent people from infringing the law?

A. To a certain extent.

Q. Will the panchayats help to bring cases of infringement to the notice of the proper authorities?

A. They will try to settle them themselves, but if a man gets desperate the case will be taken to the court.

Q. In other words you want the panchayats to exercise the penal provisions and to award punishment themselves instead of referring the matter to the duly constituted authority?

A. We will not give the man criminal punishment like the courts. We will let him suffer some sort of social penalty. We may send him to pilgrimage or do some such thing.

Q. We have been told that in Sindh the mortality among the Hindus is the highest.

A. Yes.

Q. What do you attribute it to?

A. Partly to early marriage and partly to luxurious life.

Q. To whom would you give the right of complaint?

A. Guardians of the girl or any vigilance society that may exist in the place or the injured party.

Q. Who will investigate?

A. A first class magistrate or an elderly man of the town in place of the police.

Q. Do you mean that the investigation work that is now being done by the police should be transferred to the magistrate, who should himself go to the scene of occurrence, collect all the evidence, and then try the case?

A. He will transfer it to the Sessions Judge.

Q. Will it not be preferable if the investigation is entrusted to a high official of the police like the Deputy Superintendent?

A. I don't want the police which takes money from both sides.

Q. Will these panchayats be able to collect evidence?

A. They will help a good deal.

Q. Have you any objection to a system of registration of marriages that is of all marriages being required to be reported to the proper authority to be constituted for the purpose?

A. That will look to be very hard for the parties. People would not like it. They would not like any additional strain upon them.

Mr. Bhargava: What will be the strain, they will only have to report?

A. If they fail to report they will have to undergo punishment.

Chairman: Are you connected with any maternity work at Shikarpur or Sukkur?

A. I am not connected, but I can give you some information.

Q. Out of a hundred confinement cases that come there how many are cases of mothers below 13 and how many of below 14?

A. I am sorry. I could not give you that information.

to the house and if the trial is by a jury, the jurors also will have to go to the house.

A. I object, on the ground that there is a huge crowd in the Court.

Q. If the Magistrate examines her in the chamber would you be satisfied?

A. No. She will have to come all the way to the Court. I would prefer that the complainant should be examined at her own house.

Q. Then there will be the medical examination also.

A. I have no objection to medical examination. The police should not interfere. Vigilance committees should be formed in different places.

Q. Will they work?

A. Yes.

Q. Some witnesses have said that it would be very difficult to get public-spirited men to take up this work.

A. It is easy to get 5 or 6 men of the right sort in a town.

Mr. Mudaliyar: For how many years past was there agitation in favour of this legislation in Bikaner?

A. For the last 8 years. It was moved in the Assembly and passed just one month back. The educated and the advanced people were in favour of it and the orthodox people were all against it.

Q. Was there much opposition inside the Legislature?

A. There was not much opposition. Officials were neutral and out of the non-officials 14 voted in favour of it and 4 remained neutral.

Q. Was there any very violent agitation outside the Assembly?

A. They wanted that the matter should not be in Government hands. They said the panchayat should decide such cases. When they were asked whether they could manage this, there was no response and legislation was resorted to.

Q. What is the punishment provided for?

A. Fine upto 1,000 rupees.

Q. But you realise that in a rich community like yours, men can easily pay the fine and defy the law and perform the marriage.

A. It will be a moral check. At the same time we thought that the people would not like to pay the fine, because there is a stigma attaching to the fine. Anyhow people want to take shelter of the law. The law will strengthen the hands of those who want to have marriages celebrated at an advanced age but are prevented by social customs. If a girl is married say at 11, and the father of the girl does not want to send her to her husband's house immediately, the husband's father might say "when you have once married the girl you have no right to keep her"; but if there is a law, he can reply, "I cannot help it." The parents of the husband will not then insist.

Q. Will the law that you are talking of help them to put off the marriage?

A. No; I am talking of the age of consummation.

Q. You suggest that here in British India we might fix the age of marriage at 14. You say also that your community in Bikaner was opposed to this legislation. Will this legislation be liked by your community in British India then?

A. Bikaner is a small State where there are more uneducated people than educated people whereas in British India the people are more educated. The educated portion of my community will therefore be favourable to fixing the age at 14.

Q. Do you think there will be serious opposition among the people in general?

A. There will only be talk, but people will not non-co-operate. They will accept the law once it is passed.

Q. You suggest that the husband should be exempt if he is below 18. There may be cases where neither the parents of the girl nor the parents of the boy might be really responsible, and yet cohabitation may have taken place. Would you not in that case make the boy responsible?

A. In that case I have suggested that a boy between 16 and 18 should be flogged.

Q. Do you think that consummation before puberty is more common among the law and poorer classes?

A. It is common more among the higher classes.

Q. Have you any reason to suppose that some sort of artificial menstruation is brought about amongst people in your community to hasten puberty?

A. No.

Mr. S. C. Mitra: Am I to understand that you are talking from your experience of Bikaner and also from your experience of your community in British India?

A. I have some knowledge of other communities also.

Q. Is the percentage of educated people in your community in British India higher than that in Bikaner?

A. In towns only. In comparison the number is larger.

Q. Do you think that once this legislation is passed, the people will accept it just as they did legislation in the case of Sati and widow re-marriage?

A. We can force legislation of this kind but not widow remarriage.

Q. Is it a fact that in some communities marriages are immediately followed by consummation.

A. Yes.

Q. Is it due to any religious notion?

A. There is no religious notion but it is only custom. The girls are allowed to go to their husbands' houses immediately after marriage, but even then there is no custom to the effect that they must go.

Q. Do you believe that the attainment of puberty does not mean the attainment of maturity?

A. Yes.

Q. And how many years after puberty do you think a girl becomes mature?

A. Three years.

Q. You suggest that there should be a different procedure in the trial of these cases. Do you think that it is equally necessary for extra-marital as in marital cases?

A. I would suggest that in extra-marital cases the girl should not be brought to the Court. The offender should have imprisonment in such cases and the punishment should be as high as possible. I have no objection to a public trial of the man.

Q. As regards marital cases, should the procedure be different?

A. Yes.

Q. Is it your opinion that there is no religious injunction for early marriage?

A. As far as I know there is nothing. But there are some people who think that it is against their religion. As far as I know there is no such injunction in the Shastras, but it is only a custom which was adopted during the Muhammadan rule and which is continuing.

Q. It is true that there have been very few cases under the Age of Consent law, but may we take it that though the cases were few, yet the effect of the law was extensive?

A. Yes.

Q. And do you not think that though when this legislation is passed there may not crop up a large number of cases, yet its indirect effect on the people will be very great?

A. Yes, the feeling of the people will change.

Q. Do you think that the lapse of 3 years since 1925 is sufficient to justify the raising of the Age of Consent?

A. Yes.

Q. You suggest flogging as a punishment. Are you aware that the opinion throughout the civilised world is against flogging and capital punishment? Will you therefore consider again and say if it is essential in such cases?

A. It is essential. The man has injured the girl and it is only proper that he should be injured in return. Then only will the man come to his senses.

Mr. Bhargava: What is the number of Marwaris in Karachi?

A. Two thousand. In Bikaner, Bhewani Hissar and other places their number is fairly large.

Q. Is Gaona ceremony prevalent amongst Marwaris in Hissar?

A. Yes, to some extent. But sometimes only a formal ceremony is gone through and Gaona is celebrated on the same day as the marriage.

Q. Can you give us the total number of marriages performed in the Hissar district?

A. No.

Q. Does Gaona ceremony take place in these cases?

A. Yes, usually after three years of the marriage.

Q. Do you think that in such cases there is no pre-puberty consummation?

A. I cannot say, because previous to the Gaona ceremony they send the girl to the house of the husband on marriage occasions.

Q. But you cannot be sure whether consummation takes place or not?

A. No.

Q. Have you heard of any cases where during the visit of the girl to the house of her husband on marriage occasions consummation has taken place?

A. I cannot mention any particular case. But I can say that generally among Marwaris we have heard of pregnancy before 13.

Q. Do you not think that when girls go on particular occasions like that the consummation can only be penalised with great difficulty?

A. It is difficult.

Q. So in many cases knowledge cannot be imputed to the father or male-guardian. And unless there is a case of proved injury or pregnancy it is difficult to prove consummation.

A. But it is the parents who send her.

Q. Then do you want to penalise the sending of the girl?

A. I want to stop such consummation altogether.

Q. Do you want therefore that the sending should be made an offence?

A. Yes; once she is sent it is the parents that are responsible.

Q. And you think that it is very difficult to find out in a particular case whether the parents have erred so far as consummation is concerned. So that you would rather like that the age of consent and the age of marriage should be very much near each other. Is it so?

A. Yes; if you can increase the age of marriage to 16 it would be better.

Q. As a compromise would you like the marriage age to be fixed at 15?

A. If we know that 16 will not be given we will be satisfied with something less.

Q. You seem to be of opinion that the power to report cases of infringement of the law should not be given to everybody as otherwise harassment may take place. You might be aware that in Sarda's Bill certain safeguards are provided and one of them is that there should be a preliminary enquiry. Would you have it?

A. Yes.

Q. The second thing is that the complainant is required to put in a security of a certain amount. If these safeguards are enough to eliminate the possibility of some vicious and irresponsible men coming in with a false report, do you think the law will work?

A. But then no complaint will come.

Q. Would you like to include that a bond may be given by the vigilant society, or by some individual member of the society?

A. Yes.

Q. Would you require a bond from the parents of the girl?

A. There is no necessity. People other than parents or guardians should give the bond.

Q. Supposing the celebration of marriages is penalised before a certain age, would you like that the power of initiating prosecutions should be given to vigilant societies alone?

A. The power may be given to any individual with certain safeguards. In other cases power should only be given to vigilant societies.

Q. Have you got these vigilant societies anywhere at present?

A. There are no societies existing at present.

Q. In cases under the Age of Consent Act do you suggest that the cases should be tried in camera?

A. I suggest that the trial should be conducted in the girls' house.

Q. Sometimes a case may occur in a village some 20 miles from the headquarters; then will it not be difficult for the Magistrate to go to the place of the girl?

A. I think it is more essential for the officer to go to the girl's house than for the girl to go to the Court.

Q. Do you mean to suggest that the ordinary Courts should try such cases?

A. No special officers are necessary for this purpose. Special powers may be given to special Magistrates.

Q. If the provisions of this legislation are fully published and a few prosecutions come up, do you not think that opinion will change in a short time and these prosecutions will not be frequent?

A. I do not know if after 2 or 3 years there will be any necessity for this law.

Q. You say that so far as boys between 18 and 21 are concerned, they should be flogged. What punishment do you suggest for boys above 21?

A. Flogging and fine if the boy is below 21; imprisonment if the boy is above 21.

Mrs. Brij Lal Nehru: What is your object in suggesting flogging for boys between 16 and 18?

A. Only to teach a lesson to others.

Q. With this punishment will more cases come to Courts?

A. The vigilance societies will help to bring them to the Court.

Q. With this punishment will even vigilance societies dare to bring cases of respectable families to Court?

A. If they have got conscience they will do that.

Q. Do you not think that some other punishment will better serve the purpose?

A. I think severe flogging should not be given. A sort of threat might be given and the boys may be sent to the reformatory school for good behaviour.

Q. Are you aware that there is an agitation in the country that flogging should be altogether removed from the list of punishments?

A. I do not think that even transportation will do in these cases. A man who has injured the girl should be injured in return.

Mrs. O'Brien Beadon: Can you give us any cases of injury resulting from an early consummation?

A. I know many cases.

Q. Can you give us any special cases?

A. Many girls have become very weak as a result of early consummation and others suffer from all kinds of diseases like phthisis. Their children are very weak and almost equal to dead. If they live they are worth nothing, and they usually die after giving a great deal of trouble to the parents.

Q. Can you remember any case in which early child-birth has been fatal to the mother?

A. I remember one case in the Bikaner State.

Q. What was the age of the mother?

A. 11 years.

Q. How did she die?

A. At the time of child-birth.

Q. Is early marriage due to paucity of women or to custom?

A. No; it is due to custom.

Q. Are women fewer in your community?

A. No; there are plenty of women in the community.

Q. In the marriage law of Bikaner is there any restriction imposed on elderly men saying that a man above a certain age should not marry a girl below a certain age?

A. Yes; a man above 40 years should not marry girls below 14. I suggested that such men should marry widows but my suggestion was not adopted.

Q. You say that it is the custom for boys in your community to be married late. Do you find any increasing immorality among boys on account of this?

A. I do not think the immorality will increase if the boys are educated at the same time. Actually there is very little immorality because these boys mostly go to schools and colleges and their time is occupied. This is generally the complaint made by orthodox people to frighten the social reformers.

Q. Since how many years is the age of marriage going up in your community?

A. Since the last 3 or 4 years. I might mention in this connection that if girls are married early they cannot get proper education. Therefore the age of marriage of girls should be increased. In case the girls are married early, the boys' education is also interfered with. It is necessary that both the boy and the girl should be educated; otherwise when the boy is alone educated and the girl is not educated, their whole life is spent in quarrel.

**Written Statement of Mr. DARSHAN SINGH BAKHSHI, Secretary,
Jamrao Sikh Association, P. O. Moolsingh, Sind.**

1. The general public of this tract is not even aware of this.
2. (2) The present Age of Consent is too low, and it affects the health of the girls very much, and is mainly the cause of great mortality of children, as the girls married in young age give birth to children early.
- (3) Yes, there are crimes of seduction or rape frequent in this part of country. The amendment of the law made in 1925 has not effected at all, education among the general masses is the only measure to make such laws effective.
- (4) No.
- (1) No.
- (2) The public are quite indifferent and unmindful in this direction.
- (3) It is done.
- The only possible steps are to declare the marriages under fourteen years illegal if not crime.
- (5) It differs from 11 to 14 years of age.
- It is different according to the communities and caste.
- (6) 1—3. Yes, very common.
- Nobody comes to Court with such complaints.
- (9) No, the girls at the age of 14 are physically developed for consummation.
- (10) At present the girls of 20 even cannot realise the consequences of cohabitation, because of illiteracy in the rural areas.
- (12) It looks like that.
- (13) They do not know absolutely about such laws.
- (14) Yes.
- (20) In my part the legislation affixing the minimum age for marriage will be more effective.
- (21) Both side by side, one cannot succeed.

**Oral Evidence of BAKHSHI DARSHAN SINGH, Secretary, Jamrao
Sikh Association, P. O. Moolsingh, Sind.**

(Karachi, 2nd October 1928.)

Chairman: Are you the Secretary of the Jamrao Sikh Association at Moolsingh?

A. Yes.

Q. Is there a large Sikh population?

A. Yes, about 600 or 700 families.

Q. Are they mostly cultivators?

A. Yes.

Q. Are there any Jats?

A. Practically all are Jats.

Q. Are the customs about marriage and marriageable age about the same among all classes?

A. Yes.

Q. What do you think is the marriageable age of girls among Sikhs?

A. It is about 14.

Q. Are there cases under this age of 14?

A. Very rare.

Q. Is there any *Goana* system amongst you?

A. We call it *muklawā*. That is a sort of custom which is observed immediately after marriage.

Q. Have you many cases of girl mothers at 15 or 16?

A. Yes, there are some cases of mothers of 16 but below that they are rare.

Q. You have stated in answer to Question No. 6 that these cases are very common?

A. I have given this statement about all the people.

Q. Then your answer pertains to all communities?

A. Yes.

Q. Do you think the law of the Age of Consent is well-known about the place?

A. No, it is not known at all.

Q. Even in those communities in which marriage takes place early?

A. Yes, even among them.

Q. You have said that you would prefer the legislation fixing the minimum age for marriage. Is that something like the Sarda's Bill for instance?

A. Yes.

Q. Could you tell us why this law of Age of Consent has been ineffective?

A. Because it is not known.

Q. If it were largely known would it have been more effective?

A. To a great extent.

Q. Will you tell us what you recommend to the legislature for consummation of marriage?

A. I would say 16.

Q. Do you think that this age will be generally acceptable to the Sikh community?

A. I think so.

Q. Could you say whether it will be acceptable to the other communities in Sind?

A. I do not think it will be acceptable to the Bhils and Katchi people because they marry early.

Q. If it were fixed at 16 would there be considerable opposition?

A. There will be some opposition.

Q. Not considerable?

A. It will be considerable so far as they are concerned.

Q. Will you kindly tell us whether you would make the marital offence cognizable or non-cognizable?

A. I would make it cognizable up to 16.

Q. Is it your idea that marriages be declared to be illegal up to a certain age?

A. Yes, up to 14.

Q. Do you not think that there will be a host of opposition from all classes in the country if marriages are declared illegal because they are celebrated before a certain age?

A. No law can be passed without opposition.

Q. Coming back to the subject of consummation, you say that the age should be fixed at 16. Would you make the offence cognisable or non-cognisable?

A. I would not allow the police to interfere in such cases.

Q. To whom then should the right to complain be given?

A. To the Panchayats.

Q. Do you think that public spirited people will be forthcoming to take up this work?

A. Yes; there would be people.

Q. You said that a girl is not fit to realise the consequences of her act before she is 20. What then would you fix as the Age of Consent in extra-marital cases?

A. I was talking only about the consequences. The consequences can be realised by the girl only if she is educated; otherwise she will not be able to realise the consequences. But for the Age of Consent in extra-marital consequences I would be satisfied with 16.

Q. Would you recommend a system of registration of marriages; that is to say, a system requiring all parties to the marriage, namely, the parents or guardians of the bride and the bridegroom to report the marriages to a specific authority?

A. Yes, it should be done.

Q. Who should be required to maintain the register of marriages in towns and in rural areas?

A. In towns the registers can be maintained by the registrar of births and deaths. In villages they can be maintained by Patwaris or other village officers.

Q. Can you suggest any measures for making the law more effective or operative hereafter?

A. That can be done by the village Panchayats.

Mr. S. C. Mitra: Can you tell us if there is anything in the Sikh scriptures about the marriageable age of boys and girls?

A. There is nothing for or against.

Q. When you suggest that marriages should be declared illegal do you mean that marriages should be declared punishable by law or that they should be declared invalid?

A. I suggest that marriages below the age fixed should be declared invalid, because only that kind of threat will make such marriages impossible.

Q. Can you tell us what the opinion of the Sikh leaders will be on the subject?

A. I cannot say if the Sikh opinion will be for or against this measure.

Q. Do you think that if the Sikh leaders accept this measure there will be no opposition on the part of the Sikhs?

A. Still there will be some opposition.

Q. You say that at 14 girls are physically fit for consummation. Do you seriously hold at 14 they are fit?

A. Yes, they are physically fit.

Q. At what age do the girls generally attain puberty?

A. Between 12 and 13.

Q. Do you not think that after puberty there should be an interval of at least two or three years for the girls to mature?

A. Physically there is a vast difference between the girls in towns and in the villages. In villages the girls are fit at 14. A later age might, however, be fixed for girls in towns, say 16.

Q. Do you make any difference between the Age of Consent in marital cases and in non-marital cases? As regards married girls physical development is the only consideration. As regards girls who are not married, do you not think that in order to give their consent they should have mental development also, that is, they should have the discretion to understand

these things. Will you therefore make a difference between the two cases and if so what will you fix as the Age of Consent in non-marital cases?

A. I would have it at 16.

Mr. Bhargava: You say that girls at the age of 14 are physically fit for consummation. But you say that the marriage age should be fixed at 16. How do you reconcile these two?

A. I only suggested 16 as the minimum age for marriage.

Q. It is very difficult to get at cases of consummation if they take place after marriage. Would you therefore have both the Age of Consent and the minimum age of marriage the same?

A. No; there should be a difference of at least a year.

Q. You say that even girls of 20 do not realise the consequences. Would you then have 16 so far as seduction cases are concerned?

A. Yes, it should be 16 in the case of village girls.

Q. Supposing a girl is unmarried. You say she is not able to appreciate the consequences of any connection whatsoever. In her case so far as rape cases are concerned, would you not have 18?

A. Yes.

Q. You say that crimes of seduction and rape are frequent in this part of the country. What is the age of the girls seduced or raped?

A. Between 13 and 16.

Q. Do all these cases occur outside the marital area?

A. Yes.

Q. If this age is between 13 and 16 do you not think it is an additional reason why 18 should be fixed as the Age of Consent outside marital cases. Will it not facilitate the fixing of the Age of the girls?

A. Yes.

Q. You say that village panchayats should be given power to report cases. Do you know of any village panchayat in Sind or in the Punjab exercising such powers?

A. They can simply inform the officers concerned.

Q. Are there any village panchayats in existence to-day who will be in a position to discharge the duties of vigilance societies? Are there such panchayats to whom, without fear of abuse, you can give this power?

A. At present none exists.

Q. Do you not think that the parents of the girl or other persons interested in the girl should be given power to report?

A. No; the parents should simply report to the Panchayats and on information received from the Panchayat the District Magistrate should order and initiate the prosecution.

Mrs. Brij Lal Nehru: Can you tell us amongst which classes of society the seduction cases are frequent?

A. The Bhilis, Kohlis and other backward classes. It is sometimes common among Muhammadan Zamindars also.

Q. Are they the offending parties?

A. Yes.

Q. Why do you think that such cases do not come to Court?

A. If the cases are among the low classes, they are generally decided by the panchayats. In the case of the Zamindars, they kidnap girls of the poorer classes and the latter cannot afford to go against them to Courts.

Q. You say that consummation before puberty is common. Amongst what class of people is it common?

A. It is common among those people where early marriage is frequent, for instance, the Banias, Kohlis and Bhilis.

Q. Do you think that amongst them consummation takes place before puberty?

A. Yes; as soon as they are married; and they are usually married at 11, 12 and 13.

Q. Do you mean to say that maturity is not taken into consideration at all for the purpose of consummation?

A. Yes.

Q. Is the number of women in Sindh smaller than men like the Jats of the Punjab?

A. Yes.

Q. Is it due to any neglect of girls.

A. They do not neglect girls, but it just happens like that. It is a fact that the number of girls is fewer.

Written Statement, dated the 23rd September 1928, of Miss AGNES KHEMCHAND, B.B., Organising Secretary for Sind, All-India Women's Conference for Educational Reforms, Hyderabad, Sind.

1. There is no dissatisfaction in our part of the country and people are hardly aware of the law. Once in the way a case is reported in the papers of the Police taking action in remote parts of Sind.

2. Advance in the law relating to the Age of Consent is necessary on account of humanitarian considerations, and owing to prevalence of early and unequal marriages in Upper Sind—Larkana, Shikarpur Sukkur and Jacobabad and in villages in Lower Sind, and in the least of the city of Karachi even.

3. The law has not been altogether effective, but it nevertheless has helped to stimulate public opinion in that direction. An advance in the Age of Consent will have further effect in forming public opinion.

5. From inquiry among medical women, I am informed that Hindu girls attain puberty at the age of thirteen or slightly after and Mahomedan girls a year later, but in villages puberty is reached sometimes earlier.

6. Cohabitation in Sind is common immediately after marriage. There is no rule for girls to return to their parents after the marriage ceremony and only go to their husbands when they reach the age of puberty. From inquiry from various Health visitors we find that very occasionally there are delivery cases at the ages of 13 and 14. These cases do not go to Court and people do not hide the facts as they are ignorant of the law.

7. Early consummation among the poorer classes in Sind is chiefly due to paucity of girls, to custom and to want of self-control, rather than to any religious injunction. Among the upper classes, late marriages are in vogue.

8. *Gaona* and *garbhadan* ceremonies are not usual in Sind.

9. Medical women say that attainment of puberty is no justification for consummation of marriage. The girls should be at least 14, preferably 16, as they are not fit for motherhood before that age.

10. At the age of sixteen at least, preferably 18.

11. Very rare cases of injury are brought to the notice of the public. Sometimes we hear of young married girls dying of serious bleeding and we come across girls who suffer all their lives because of their marriages being consummated very early. Among the poorer classes, no shame and disgrace attaches to these things. Among the middle classes, one can only guess at them from hearing of the constant illness of young mothers.

12. As our Women's Conference is dealing with this question from an educational point of view we find that though the immediate results of early marriage and consummation are not terrible, the after effects are often disastrous and effect both the girl mothers and their progeny. The former are not able to take care of their children who are generally weaklings. They have to stop their education and the consequence is the large percentage of ignorant mothers. The children suffer from physical and mental weakness.

13. None to my knowledge, but it has co-operated with other causes to educate public opinion against early marriages.

14. Where ignorance prevails disappointment is shown if cohabitation does not occur immediately after marriages.

20. Both are necessary. The minimum age of marriages is necessary for postponing marriages, the Age of Consent for affording protection to unmarried girls on account of the pressure of the law. The age of 14 and even 16 as the minimum age of marriage for girls would be favoured in Sind. Every medical man and woman I have met thinks the age of marriage should be fixed. It is well-nigh impossible to prevent cohabitation of married people. Legislation fixing the minimum age of marriage is the only means to eradicate the evil.

21. I would press both penal law and social propaganda into service to eradicate this long standing evil.

I have no objection to being examined orally if so required by the committee.

Oral Evidence of Miss AGNES KHEMCHAND, Karachi, Organising Secretary for Sind, All-India Women's Conference for Educational Reforms, Hyderabad.

(Karachi, 2nd October 1928.)

Chairman: You are a member of the Standing Committee of the All-India Women's Educational Reform Conference.

A. I am the member for Sindh.

Q. The Standing Committee consists of how many ladies?

A. About 25.

Q. Are you the only representative from Sindh?

A. Yes.

Q. Have you had any meeting supporting either of the two bills, Gour's Bill or Sarda's Bill?

A. We have had 5 meetings in Sindh besides the one we had previous to the Delhi Conference. We had meetings at Hyderabad and Karachi supporting the Age of Consent Bill and also the child-marriage bill. We also had meetings in 1927 supporting the Age of Consent Bill.

Q. What age did you support?

A. 16 for married girls and 18 for unmarried girls, and Sarda's Bill according to Select Committee. i.e., 14 for girls and 18 in the case of boys.

Q. Did you meet with any opposition in all these places?

A. No. Shikarpur, Sukkur and Larkhana represent the orthodox section and Shikarpur women were most enthusiastic. They desired to stop the evil but they were powerless.

Q. What class of women were attending those meetings?

A. All classes attended them. In Larkhana, Shikarpur and Sukkur we had great difficulty in explaining to them.

Q. Did they express themselves?

A. They spoke at the meetings. When one or two caught the point they explained it to others. They were very enthusiastic about it. This was particularly so in Shikarpur.

Q. About how many ladies attended at Shikarpur?

A. About 200. In Sukkur they were only 70 because the notice was short. In Shikarpur the awakening is great. At Hyderabad we had some 400 ladies at the first meeting and later on we had sometimes 200 and sometimes 300.

Q. Do you think that by now they have been made cognizant of this law?

A. They did not know anything about the law. We did not tell them that there was any law existing. We simply said that a law was going to be passed penalising marriages below a certain age and also fixing the Age of Consent. I may add that the Hindu Sabha meeting at Hyderabad supported me. Again, The All Sindh Social Conference which was held only 3 weeks ago also passed a resolution in favour of it. That conference was held at Hyderabad.

Q. Do you think if a Bill like Sarda's or a Bill like Gour's is passed it will be acceptable to a large majority of women in Sindh?

A. From what I have seen I can say that women will accept it. Even the orthodox will accept it. They are beginning to realise the evil consequences. They now understand that they are the sufferers. It is simply blind slavery to custom that they have been acting in this way.

Q. In your answer to Question No. 2 are you referring to the marriage of widowers with girls of small age?

A. Yes.

Q. In answer to Question No. 6 you have said cohabitation immediately after marriage is common. Is that your own knowledge?

A. I have been told so. I have been a teacher for some years and have been in charge of girls' schools and have therefore come in contact with girls. I have found that soon after marriage they give birth to children which means that cohabitation takes place immediately after marriage.

Q. Are you connected with any confinement work?

A. No. But I have been discussing the matter with medical ladies, because after getting some medical knowledge you can appeal to the ladies better. Some knowledge is necessary to appeal to them from a humanitarian point of view.

Q. You have put the age for marital cases at 16 and for extra-marital cases at 18. Why do you make this distinction?

A. There should be a distinction between the married and the unmarried. It is harder for the married couple to control themselves unless they live apart.

Mr. Kanhaiya Lal: I understand you are a teacher employed in Hyderabad.

A. I am in Kundan Mal Girls' High School. I have been there for 6 years. Altogether, I have been in the Education Department for about 18 years, and I have been for the most part in Sindh. I was at Bangalore for some time. I was also in the Women's Training College which is a Government institution at Hyderabad.

Q. You have said that the Mohammedan girls attain puberty a year later than the Hindu girls. Is there any particular reason for it?

A. I got that information from Professor Pherwani who is the organiser of the Women's Health and Education Society. He has maternity homes also in Shikarpur.

Q. Is that the case in rural areas or city areas?

A. In rural areas I think it would be later.

Q. Was that enquiry in connection with city areas or rural areas?

A. Both.

Q. Then can you give us the reason why it should be so?

A. Mohammedan girls are stronger and there is less talk about marriage in Mohammedan families than in Hindu families. But there have been cases in Larkhana where a boy of 10 has been married to a girl of 25 and in Karachi a boy of 9 has been married to a girl of 16. This is generally for family reasons, otherwise as a general rule Mohammedans get married at a later age.

Q. You have said that the age for consummation might be fixed at 16. Do you think it will be acceptable generally to the Hindu and Mohammedan communities?

A. I think so.

Q. Were the meetings you refer to attended by the Mohammedan ladies also?

A. They spoke also. I think it will be acceptable to the Mohammedan community also.

Q. Can you suggest any method of making the law effective, i.e., of bringing these cases of infringement of the law to light?

A. I think we should have vigilant societies and panchayats.

Q. You think there is sufficient public spirit in the country to enable us to form village and town panchayats both among Hindus and Mohammedans.

A. I think there would be some opposition in the villages in the beginning but not in towns. Hindu Sabha has created a very strong feeling in favour of them and they would be most useful. They would not be so repulsive to the people. Ladies should also be appointed on these panchayats. There are a number of public spirited women rising in the country. They are not necessarily English educated women, but they are doing very good work. They are widows. The dais should also be made to report these cases.

Q. I wanted to find out whether these panchayats should be detective, preventive or doing some educative work.

A. All the three.

Q. Are you in favour of registration of marriages?

A. Yes.

Q. You mean reports should be made by the guardians or parents of every marriage that takes place to some responsible officer.

A. I think the municipal office might undertake that work and a similar provision should be made in rural areas. The Panchayats could do that. The Government should appoint registrars to travel about.

Q. Would you recommend that a certificate be issued giving the names of the parents, the ages of the couple and such other particulars regarding marriage to serve as evidence in case of need?

A. I think that would be helpful.

Q. Would you recommend that the party in custody of the girl should be penalized as abettors of the crime if it allows the girl to go to the husband for cohabitation?

A. I think the parents as well as the husband if he is over 18, should be penalized as abettors.

Mr. Kadri: You have told us the case of a girl who was mother at the age of 9 in a village. Was it recently?

A. Yes, last year, and also Professor Thidani keeps records of the ages of the girls at the time of marriage, age of boy at the time of marriage and the age of the mother at the time of first child. The average was 13 in 2,000 cases.

Q. What is the average age of marriage?

A. The average age of marriage is 11 and the average age of motherhood is 13 to 13½ but in the majority it is 14 or 15.

Q. Do you know anything further of that unfortunate girl who became a mother at the age of 9?

A. No.

Q. You say that the law as to the Age of Consent so far has been ineffective. Can you give us any reason why it has been ineffective?

A. There has been much apathy and there is no one to report. The police or the C. I. D. cannot go and find out. I would have the co-operation of the people themselves. When they get Government power they would bring these cases to light.

Q. Would you ask Government to recognise these societies and give them certain powers?

A. Yes.

Q. About punishment—would you suggest any change in the case of marital offences? Sometimes it is said that if the punishment were reduced people would be more willing. What is your opinion?

A. I think it is simply on account of carelessness and because Government has not taken sufficient interest in the matter.

Q. Or is it that people do not want this matter to be brought to Court?

A. Naturally Indians are very unwilling, not to bring anything in the public eye. If there is a case of poison in the family even then they would hide it. They would never think of reporting the matter and having the body kept for investigation.

Mr. Mudaliyar: If the average age of motherhood is 13 there ought to be a number of cases where the first pregnancy is very much below 13?

A. Yes.

Q. Are these cases mostly from the villages?

A. No, in towns of Shikarpur itself they occur.

Q. Who gives the age of these girls?

A. The husband or the parents whoever bring them.

Q. You know Indians are notoriously wrong in giving ages. A man of 40 is sometimes reported to have given his age as 10.

A. I do not think so. I have never heard that they are so ignorant about their ages. They follow the Hindu months and I have noticed that they do not know the English dates and there are mistakes about that. When the girls are married they always send their horoscopes to the bridegroom's mother.

Q. Do the villagers keep horoscopes?

A. Always. People in Hyderabad are very particular about having the date and hour of their birth being given.

Q. You have said that you were in charge of a high school for girls. How many girls are there?

A. 513.

Q. Have you taken any statistics of these girls as to when they were married?

A. They are not married. They come in as primary students and go up to matriculation. As a rule we do not have the married girls.

Q. Practically all these 500 girls are unmarried?

A. Yes.

Q. You say that girls are generally married at 13 but do not attain puberty between 13 and 14 and you think that another 2 or 3 years must pass after puberty before the girls' body is fully developed. Is it for this reason that you put the Age of Consent at 16?

A. Yes.

Q. May I take it that you make this difference between marital and non-marital cases because in regard to married girls the only thing that we should principally consider is the physical development and as regards the other girl her age of discretion and responsibility as well should be taken into consideration?

A. Yes.

Mr. Mitra: Is there any notion among the ladies in villages that consummation should immediately follow the marriage ceremony?

A. Yes; that is the general custom in Sind.

Q. This custom is not due to any religious notion?

A. I do not know. They generally think if the girl is married late there will be no difficulty.

Q. Are the villagers following it?

A. There will have to be propaganda. These leaders will have to go to villages and explain to them.

Q. I think you will agree with me that though there are very few cases under the Age of Consent law yet its indirect effect has been enormously great in putting off the age of marriage?

A. Yes.

Q. You like to fix the age of marriage at 14.

A. As a first step but in my personal opinion it should be 16.

Q. You also think that legislation is necessary?

A. Yes, they want some moral support to follow their real inclination and if they know there is a law which will give them the necessary moral support they will marry late. People have great regard for the authority.

Q. Would they not think that Government is trying to pervert their religion in any way?

A. No, in fact they do not think either way. When once an idea is given they realise it and they will follow it themselves.

Q. Do you want any difference in procedure of trials in marital state and extra-marital state or would you like the same procedure to be followed?

A. If there were special magistrates for this purpose it would facilitate matters.

Mr. Bhargava: Supposing Sarda's Bill passes don't you think that men of 45 or over should never be allowed to marry a girl of 14?

A. Certainly not.

Q. Would you like in that case that some provision may be made to prohibit these unequal marriages?

A. Yes.

Q. In reply to Questions Nos. 9 and 20, you say "medical opinion says..... apart from that age". Considering this very difficulty to obtain confession in cases of consummation after marriage would you not like that the marriage age and the consummation age should be the same?

A. I would prefer it to be the same.

Q. Because of the concession to the orthodox opinion everything is in the melting pot. Would you in these circumstances rather like the Age of Consent and the age of marriage to be fixed at 15?

A. Yes, both ages should be the same.

Q. You say that parents should be penalised as abettors if they send their girl before 14. Do you think it is a practical proposition at all?

A. I think so.

Q. You said that a girl was mother at 9. You yourself did not scrutinise the circumstances: you have got no personal knowledge about it?

A. No, but I do not think there can be anything incorrect about it. I say this on the authority of Mr. Choithram who was collecting statistics.

Q. You say that the average age of motherhood is between 13 and 13½ and then in the same breath you have stated that the majority are married at the age of 14 or 15. Will you kindly reconcile the two statements?

A. I said the average age in Hyderabad is 14 or 15.

Q. Then this average age refers to some particular portion of Sind?

A. Yes, Upper Sind.

Q. Can you give us any statistics?

A. No.

Mrs. Brijlal Nehru: Among which classes mostly early marriage is prevalent?

A. Among the Bania class and among the very poor class of people.

Q. Is that all over Sind?

A. Yes.

Mrs. Bradon: We have been told that if girls are sent to schools there is a great danger of seduction. You have been in a high school in which there are a very large number of girls. Have you had any cases?

A. No, not one.

Q. Any cases of immorality of the girl?

A. No.

Q. At what age do they marry?

A. They marry at 16 but we have also got girls of 20. Sometimes married women come for education but as a rule we do not admit married girls.

Written Statement, dated the 9th August 1928, of Mr. RUPCHAND BILARAM, B.A., LL.B., Additional Judicial Commissioner of Sind.

Answers to the Questionnaire.

1. Not in this Province.

The total population of this province as shown in the last census report is 32,79,377 persons of whom only 1,78,922 persons are literate, that is to say, roughly 31 lacs out of a population of 32,80,000 are illiterate. Of the total population, about 24 lacs are Mussalmans and about 7,50,000 are Hindus. They are classified as under:—

Community.	Illiterate males.	Illiterate females.	Literate males.	Literate females.
Mussalmans	13,03,824	10,52,518	39,477	5,204
Hindus	3,72,779	35,596	1,76,425	15,416

Of the persons shown as literate those who know English are as under:—

Community.	Males.	Females.
Musalmanas	4,162	230
Hindus	16,557	1,337

The illiterate masses know precious little of the provisions of sections 375 and 376 as they existed before 1925 or as they now exist. A Musalman keeps no horoscope and except in towns where birth registers are kept, his age is a mere guess work. So far as he is concerned, he is absolutely ignorant of his age. If a rustic who is forty years old is asked what his age is, his reply is that he is ten years old, and if not that, he is as old as the Court may put him down as.

So far as the illiterate masses are concerned, they follow their own moral code, and have no occasions either to be satisfied or dissatisfied with the amendments effected in these two sections.

2. In 1924 when the Judges of this Court were required to give their opinion as to the proposed amendments of sections 375 and 376, I gave my opinion as follows:

“I am of opinion that there should be a uniform age limit and that for the present it should be raised to 13 years. Ten years hence there may be time to raise it to 14 years or 16 years.”

With regard to the age of a wife, I am still of the same opinion. With regard to the Age of Consent of an unmarried girl, I am now of the opinion that it should be raised to 18 years. I shall deal with each of these points separately.

The age of a wife.—A reference to the annual Police Administration Reports of Sind will show that no prosecution was launched against any husband under section 376, Indian Penal Code, in 1924, 1926 or 1927. Prior to 1924 no separate Police Administration Report for Sind appears to have been issued. Only two prosecutions were filed in 1925 of which one resulted in an acquittal. It does not follow from this that no other offences were committed during these years. It is a matter of common knowledge that a rustic cohabits with his wife, as a rule, in the very month in which she menstruates which is treated by him as an indication that the girl has attained puberty. He does not know and makes no inquiries as to the age of the girl. Even if he is intelligent enough to do so, he would not be in a position to know the age of his wife. He is guided in this respect by his own moral code which he has learnt from his infancy and he considers that he is enjoined by that Code to cohabit with his wife as soon as she has attained puberty. The following table at page 125 of Vol. I of the Census Report gives the proportion of unmarried and married girls and widows between the ages of 10 and 15 years in the different communities calculated on the basis of 1,000 girls in each community:—

Community.	Unmarried girls.	Married girls.	Widows.
Mahomedans	801	194	5
Hindus	709	234	7
Jains	790	198	12
Christians	992	8	...
Zoroastrians	1,000	...	...

In dealing with marital rights, legislature should follow and not go counter to the popular notions, and in my opinion time has not yet arrived for increasing further the age limit in the case of child-wives.

A school-going girl develops more slowly than a girl who stays at her house having nothing to do and who imbibes notions of sexuality from her illiterate parents before her marriage, and uneducated as she is, looks forward for the day when she would be able to partake of her husband's bed. With the advance of education in general and female education in particular, the need for raising the age limit would *ipso facto* arise. Notwithstanding the introduction of compulsory education in certain cities and the strides which certain communities are making in that direction, it would take another decade before Sind can boast of having 15 per cent. of her population educated and then there will be time to consider the age limit.

The Age of Consent of unmarried girls.—This vice is not very prevalent among the population of this province. The total number of offences for rape brought to trial in the province during the last five years as shown in the Annual Reports of the Civil and Criminal Administration of the Province of Sind are as under :—

1923	.	.	.	.	.	.	.	.	.	19
1924	.	.	.	.	.	.	.	.	.	33
1925	.	.	.	.	.	.	.	.	.	30
1926	.	.	.	.	.	.	.	.	.	15
1927	.	.	.	.	.	.	.	.	.	17

This includes all cases of rape with girls and women over the age of 12 years prior to 1925 and those over the age of 14 years after 1925. No separate figures are available for rape with girls between the ages of 14 and 18 years.

So far as the indigenous Mahomedan population of the province is concerned, the province is known for murders over women. If a married Mussalman woman goes astray, she is known as "kari" and her paramour as "karo", i.e., persons who have blackened their faces. Several illiterate Mussalman husbands and their illiterate relations consider it obligatory on them to murder both the *karo* and the *kari* or at any rate the *karo*.

Where a girl is raped by force whether married or unmarried, the husband and the parents of the girl consider it their duty to murder the *karo*.

The offence of rape is also scarce amongst indigenous Hindus. Most of the reported cases are of poorer class of girls belonging to families which have migrated during recent years in big cities, particularly the sea-port town of Karachi where we have a mixed population from all parts of India, consisting of Goans, Surtis, Madrasis, Makranis, Gujratis, Katchis, Kolhis, Dheds, etc.

I am strongly of opinion that the age limit in the case of unmarried girls should be increased to 18 years and such a legislation would be welcomed by the people of this province.

No parent wishes that his unmarried daughter should go astray while she continues to remain under his care and is not sufficiently matured to take care of herself.

Consent of a girl in India under the age of 18 years is no consent whatsoever. She is either not educated at all or is not sufficiently educated to resist temptation, and is often seduced to give her consent. In my opinion an Indian unmarried girl requires greater protection than an English girl. Section 366A was added by Act XX of 1923. It *inter alia* punishes a person who induces a girl under the age of 18 years to go from any place or to do any act with intent that it is likely that she will be seduced to illicit intercourse with another person.

This section has not caused any dissatisfaction and is being availed of by parents to bring to book persons enticing away young girls. There is no

reason why the provisions contained in this section should not be extended to a person who induces a girl under the age of 16 years to go from any place or to do any act with intent that she may go wrong with him.

As President and Chairman of the Committee of Management of the Indian Girls' High School, Karachi, during the last ten years, I have often heard parents say that they are not willing to send grown-up girls to schools. Except girls of certain advanced Hindu communities, other girls leave school before they attain the age of 14 years and are kept in seclusion much to the detriment of their health. Legislation which penalizes interference with parental control and ensures the chastity of girls below the age of 18 years notwithstanding their consent to go astray, is likely to be of great help in inducing parents to allow their girls to continue their studies after the age of 14 years. Such a legislation will to a certain extent (though its effect in that direction be not very appreciable) help in preventing early marriages, by removing the fear in the minds of certain parents that their girls might be led astray unless they are married at an early age.

For these reasons, I would answer question 2 by saying that so far as unmarried girls are concerned, circumstances exist which justify making an advance on the present law by increasing the Age of Consent to 18 years but not in respect of married girls.

3. As said above, crimes of seduction or rape, except of rape by husbands, are not frequent in this province. The amendment of the law made in 1925 raising the Age of Consent to 14 years has had no appreciable effect in preventing or reducing cases of rape outside the marital state.

Section 366A has of late been availed of in bringing to book culprits who seduce minor girls. Such culprits do not, as a rule, raise the plea that they induced the girls to go with them for their own purposes. They generally deny having had anything to do with the girls. But it is open to them to raise the plea that their object being to have illicit connection themselves, they are within the law.

As stated above, I would increase the age limit to 18 years.

4. No. The step I would suggest is the allocation of more funds for educational purposes in general and for educating the rural masses in particular by means of free cinema shows and other propaganda, with the object of bringing to their notice as vividly as possible the evils of early marriage and early cohabitation and the provisions of law preventing cohabitation with wives below the age of 13 years.

5. Girls attain the age of puberty from 11 to 14 years. This differs in different castes and classes of society. Among the rural Mussalmans, girls attain puberty at a much earlier age than among urban Mussalmans. Hindu girls attain puberty generally at a much later age than Mussalmans.

6. Cohabitation is common in the case of wives who have attained puberty irrespective of what their age is. As a rule, no cases come to Court.

7. No. But people do not know much of religion and several Hindus are believers in the tenets of Gurn Nanak which do not contain any such injunctions.

8. Most of the indigenous Hindus do not perform this ceremony.

9. (1) Personally I do not consider the attainment of puberty as a sufficient indication of physical maturity to justify consummation of marriage. I would put the minor's age at 16 years at which a girl's physical development may be considered to be sufficient to justify the consummation of her marriage without injury to herself and that of her progeny.

10. At the age of 18 years.

11. I am not in a position to answer this question except that I have tried two cases of rape by a husband. The first case is Sessions Case No. 22 of 1923, Crown vs. Kalu, decided on September 11, 1923. This case has been already referred to. In this case the child-wife was according to her birth certificate born on December 15, 1911. She was raped on June 30,

1923, when she was 11 years and 6 months old. Her husband was a sweeper by profession, aged 32 years and well-built. She sustained serious injuries which necessitated her being taken to the hospital and resulted in the prosecution being launched. The second case was the case of Crown vs. Ismail, Sessions Case No. 5 of 1928, tried by me on June 21, 1928. The girl's age was between 11 and 12 years. She had lived with her husband for about a month and had sustained no serious injuries whatsoever. The cause of the complaint was the refusal of the husband to maintain the mother of the child-wife who falsely alleged that she had not given her daughter in marriage to the accused, and that he was forcibly keeping her for illicit purposes. Before the committing magistrate the marriage was proved and the accused was therefore sent up to the Sessions for trial under section 376, Indian Penal Code. In both these cases the parties were not permanent residents of Sind.

12. Early consummation and early maternity are to a certain extent responsible for high maternal and infantile mortality, but there are other causes as well. The uncleanly habits of the people, the confinement of women by old illiterate *dais* and the want of medical help in rural areas count more for maternal and infantile mortality in Sind. The total area of the province of Sind is 46,506 square miles, and the number of persons per square mile according to the last Census Report works out at 71 persons to every mile. Maternal and infantile mortality has been considerably reduced during the last few years in big cities by the establishment of maternity homes and the training of *dais*, who attend to confinements in private houses. I do not think that there are sufficient data for holding that the consequences of early consummation have been very serious in this province.

13. No.

14. Except in communities which are far advanced such as my own community, women in Sind do favour early consummation of marriage for their children and take pride in it.

15. Difficulties do exist in proving the ages of girls. Extension of registration of births in rural areas and such registers being maintained by patels and zamindars in the mofussil, and the accurate maintenance and preservation of school registers showing the ages of girls admitted in such schools.

16. The difficulty would be increased by raising the age limit to 14 years or above.

17. (1) Yes. I would limit the maximum punishment in the case of marital offences to two years and to extra-marital offences to five years.

18. Yes, I would maintain the present distinction.

19. No.

20. (1) No.

21. (2) I would legislate cautiously so far as the minimum age of marriage is concerned. What I am in favour of and which I think the legislature might do conveniently is to prevent disparity of ages between the bride and bridegroom when one of them is a minor at the time of her marriage. A girl under the age of 18 years should under no circumstances be married to a man who is more than 30 years old. There are instances in Sind where parents have given their girls aged 10 years or below to husbands 50 years old. No parent can claim a right to do this, and no one will resent legislation which severely punishes such marriages.

If an age limit is prescribed for marriages of boys and girls, I would fix it at not more than 16 years and 12 years respectively, and would further provide for marriages being performed between persons who are below that age subject to the sanction of the Judge exercising powers under the Guardian and Wards Act. I would not provide for marriages performed in contravention of the law being declared as null and void, but provide for a penalty being imposed on parents who are parties to such marriages. In this connection I lay great stress on the fact that unless legislation is slow, it will

work a greater evil among the illiterate masses both Hindus and Moham-madans in this province than the chimerical good that is likely to follow.

21. I would depend principally on the progress of social reform by means of education and social propaganda, and would employ legislation only as a subsidiary aid. In this connection I might mention the beneficial effects of education in my own community. 35 years ago early marriage was the rule, and now it is the exception. At the present day in 90 per cent. of the cases the girl is invariably above 13 years of age while in former days in 45 per cent. of the cases she was invariably under 13 years of age. This change is due to education unaided by legislation.

For easy reference copies of the following statements and extracts from the Census Report for India of 1921 (Bombay Presidency), Volume VIII, Parts I and II, are herewith annexed:

(1) Tabular statement copied from pages 104-105 (Imperial Table VIII-A, Part II) showing males and females both literate and illiterate in the Province of Sind.

(2) Tabular statement copied from pages 103-109 (Imperial Table VIII-B, Part II) showing the total number of Hindu males and females, both literate and illiterate.

(3) Tabular statement copied from pages 112-113 (Imperial Table VIII-C, part II) showing Mussalman males and females, both literate and illiterate.

(4) Statement copied from pages 104-105 (Imperial Table VIII-A, Part II) showing the total number of females of all communities between the ages of 10 and 15 years.

(5) Statement copied from pages 103-109 (Imperial Table VIII-B, Part II) showing total number of females of the Hindu community between the ages of 10 and 15 years.

(6) Statement copied from pages 112-113 (Imperial Table VIII-C, Part II) showing the total number of females of the Mussalman community between the ages of 10 and 15 years.

(7A and 7B) Passages copied from pages 127 and 129, paragraphs 370 and 375 of Volume I, re proportion of effective marriages among the different communities.

I.—A tabular statement showing Males and Females both literate and illiterate in the Province of Sind.

	Literate.		Literate in English.		Illiterate.	
	Males.	Females.	Males.	Females.	Males.	Females.
Hyderabad . . .	25,491	7,517	5,048	1,023	296,953	243,489
Karachi . . .	44,211	8,458	14,895	2,803	267,837	221,559
Larkana . . .	29,603	1,819	1,127	67	310,614	264,924
Nawabshah . . .	18,261	1,951	1,404	91	215,569	182,879
Sukkur . . .	26,919	2,372	2,550	272	255,387	225,614
Thar Parkar . .	13,134	1,929	1,780	135	207,961	173,307
Upper Sind Frontier	5,932	325	235	4	128,893	105,969
Total . . .	154,551	34,371	27,089	4,397	1,632,733	1,417,741

II.—A tabular statement showing Males and Females of Hindu Community in the Province of Sind.

	Literate.		Literate in English.		Illiterate.	
	Males.	Females.	Males.	Females.	Males.	Females.
Hyderabad . . .	17,977	6,364	3,822	822	70,131	65,739
Karachi . . .	26,621	3,663	7,593	303	57,603	50,418
Larkana . . .	14,393	1,069	912	50	38,614	43,036
Nawabshah . . .	13,185	1,239	1,136	51	39,262	43,670
Sukkur . . .	21,860	1,545	1,911	78	58,467	66,719
Thar Parkar . . .	8,887	1,325	1,010	32	89,129	76,345
Upper Sind Frontier . . .	4,002	220	173	1	19,693	9,559
Total . . .	106,425	15,416	16,587	1,337	372,779	355,060

Education in Lohanas including Amils of Sind.

Statement copied from the Census Report of 1921, page 120, Imperial Table IX, Part II.

Total population 426,697	79,274	15,102	10,229	1,191	151,781	180,540
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III.—A tabular statement showing Males and Females of Mussalman Community in the Province of Sind.

	Literate.		Literate in English.		Illiterate.	
	Males.	Females.	Males.	Females.	Males.	Females.
Hyderabad . . .	6,566	954	431	29	226,621	177,635
Karachi . . .	10,895	1,570	2,159	63	206,075	167,611
Larkana . . .	6,033	713	167	7	271,468	221,339
Nawabshah . . .	5,048	702	248	24	176,222	159,153
Sukkur . . .	5,063	618	366	15	195,205	147,510
Thar Parkar . . .	3,981	554	694	92	114,615	93,585
Upper Sind Frontier . . .	1,886	98	102	...	118,668	95,685
Total . . .	39,477	5,204	4,162	230	1,368,824	1,052,518

IV.—Statement showing the total of Females of ages 10 to 15 of all castes of Females in the Province of Sind.

	Total.
Karachi . . .	21,658
Hyderabad . . .	23,621
Larkana . . .	21,787
Nawabshah . . .	18,245
Sukkur . . .	19,210
Thar Parkar . . .	18,162
Upper Sind Frontier . . .	8,155

V.—Statement showing the total of Females of ages 10 to 15 of the Hindu Community in each District of the Province of Sind.

	Total.
Karachi	5,304
Hyderabad	7,451
Larkana	3,967
Nawabshah	4,923
Sukkur	6,545
Thar Parkar	8,271
Upper Sind Frontier	880
	<hr/> 37,341

VI.—Statement showing the total of Females of ages 10 to 15 of the Mussalman Community in each District of the Province of Sind.

	Total.
Karachi	15,677
Hyderabad	16,152
Larkana	17,765
Nawabshah	13,318
Sukkur	12,521
Thar Parkar	9,530
Upper Sind Frontier	7,245
	<hr/> 92,208

VII-A.—Proportions of Effective Marriages.

The areas of potential maternity, especially when the inner period, $17\frac{1}{2}$ — $37\frac{1}{2}$, alone is considered, show three distinct types. (i) In the case of Christians and Mussalmans the individuals in this period are evenly spread over it, the weight being in the centre from $22\frac{1}{2}$ to $32\frac{1}{2}$, and the value of the two outer portions low. (ii) In the case of Hindus and still more of Jains the weight is all towards the early periods, and (iii) in the case of Zoroastrians the weight is all towards the late periods. This means that the majority of children among Mussalmans and Christians should be borne to mothers between the ages of $22\frac{1}{2}$ and $32\frac{1}{2}$, among Jains to mothers between the ages of $17\frac{1}{2}$ and $27\frac{1}{2}$, and among Zoroastrians to mothers between the ages of $27\frac{1}{2}$ and $37\frac{1}{2}$.

VII-B.—Proportions of Effective Marriages.

The points to which the whole argument leads up are: (i) that there are proportionately more married females of child-bearing age available among Hindus and Christians, fewer among Mussalmans, fewer again among Jains, and fewest of all among Zoroastrians, and (ii) that with an equal proportional incidence of child-birth to married females of child-bearing age the average age of the mothers will (as seen from the curves and from the percentage Table No. 78) be lowest among Jains, then a little older among Hindus, considerably older among Mussalmans and Christians, the oldest of all among Zoroastrians.

Oral Evidence of Mr. RUPCHAND BILARAM, Additional Judicial Commissioner of Sind, Karachi.

(Karachi, 2nd October 1928.)

Chairman: How many years have you been at the bar?

A. I was at the bar for 23 years before I was raised to the bench. I commenced practice in December 1901 and I was raised to the bench in June 1923.

Q. Am I correct when I say that once you held the opinion that 13 should be the age limit all round?

A. Yes; but that was some years ago.

Q. Do you now think that the Age of Consent outside marriage should be 18?

A. Yes. But here I would like to explain myself. When I was suggesting 13 I was giving my opinion as to what Government should do, not that I thought that 13 should be the age all round. My opinion was that Government should be slow in legislating. That was in 1924. I said that the age might be raised after some time, but that as a preliminary measure they should go on cautiously and both inside and outside marriage they should start with 13.

Q. Do you think that now circumstances justify that outside marriage the age should be 18?

A. Yes. Having recognised the principle that a seducer, for the purposes of going wrong with another girl, can be punished if the girl is below 18, there is no reason why he should not be punished if he seduced a girl even if she be his own wife. I would, therefore, apply the parity of reasons. I do not agree to section 376A as now proposed. I have changed my opinion and think that instead of waiting for 10 years you should legislate at once and raise the Age of Consent outside marital state to 18. By raising the age to 18 in the case of persons other than husband and wife you will not have opposition from anybody. No father would like his daughter to go wrong with another man; and even if he likes it he would not come forward to tell you so. Therefore you would have less difficulty in legislating. The second thing is that it is desirable because every father wants to protect his girl. If you want girls to be educated and grow up much faster than at present then you should afford protection to the father by making it impossible for anybody to touch the girl when she goes to school and attempt to seduce her. If you remove that fear among fathers, then many fathers would like to send their girls to schools to be educated; otherwise they would not like to do so.

Q. Do you think that fathers are moved by this consideration?

A. Yes; fathers have told me. They say: our girl is 14 or 15 and the mother does not like that she should go to school. That does not mean that the girls would go wrong. So far as my experience goes schools in Sind are in very safe hands, and those who are at the helm take good care to see that the girls are protected. Still there is the fear in the minds of the women as to what might happen on the way. But if they are assured that anybody who touches a girl before she is 18 is liable to be prosecuted and punished that fear will be minimised.

Q. Is the age of 18 then fixed by you on social considerations and not on humanitarian considerations?

A. I have put it from that point of view elsewhere. So far as our girls are concerned it is a fact that they do not see danger at present. I am referring to those communities who have not yet advanced in education and their girls cannot protect themselves. I consider that girls of those communities require special protection up to 18.

Q. Which are those communities?

A. Our own community is far advanced. The Parsi community also might be said to be far advanced. Excluding these two every other community requires protection. There is purdah amongst Mohammadans and their girls are illiterate. With regard to the Bania classes also their girls are absolutely illiterate. They do not understand what is right and wrong. They need special protection.

Q. Are you of opinion that a girl of 13 being tender requires special protection and that the same argument cannot apply to girls above 13?

A. It is not that. What I mean is that so long as the age of marriage is not fixed and so long as you allow girls to be married below 13 you bring together, so to say, cotton and fire; and then whatever law you might make

you will not be able to prevent consummation. Now if you punish a husband for consummation with his wife thereby you are causing a certain amount of misery to the wife and other relations. I do not mean to imply that consummation above 13 would not cause any injury. On the other hand, I say that in consummation with a girl who is under 13 there is a greater chance of injury being caused. Probably in nine cases out of ten you would be ruining the life of the girl. But I would suggest that you should put your foot upon such consummation whatever the effect may be. Therefore if there is consummation before 13 you should punish the man unmindful of the evil which might be caused thereby. When you go above 13 the chances of injury to the girl are not so much as it is when she is under 13.

Mrs. Brijlal Nehru: Is consummation of marriage common in Sind before puberty?

A. I do not think so. People say a lot of things but my impression is that before a girl attains puberty it is very very rare and that is in the poorer classes of people. There is more of it immediately the girl shows signs of menstruation.

Q. Is the case the same in towns as well as in villages?

A. It is a very difficult question. My general impression is that it is not so common. You have to take into consideration the question that every mother unless she is too poor does not want that her girl should cohabit with her husband unless she has attained puberty and therefore she protects her and similarly the mother-in-law. One case that I have referred to shows that even the sweepers do not do it. This girl used to sleep with her mother-in-law separately and that night the husband was able to take her without her knowledge. Even the low class people protect their girls.

Mr. Bhargava: Would you say consummation takes place before 13?

A. After menstruation.

Q. So there is no chance of pre-puberty consummation in rural areas?

A. You cannot say no chance but chances will be very rare. Sometimes a boy and a girl both live together and the parents are not there.

Q. Will you say that you would prefer that there should be a law for marriage and the age which you at present fix is 12 to 16?

A. I made other suggestions also with the object of facilitating legislation hereafter.

Q. So that your opinion is that there will be some opposition to it?

A. There will be great objection. Here you find people have considered a particular thing to be right. Most of the people are illiterate and the intelligentsia form a very small community. If these people say that such and such thing will be in your interest and we are going to legislate for you on the subject the opposition might be less.

Q. So that your impression is that Government should legislate even if there is opposition?

A. You should legislate with caution. If you can by certain other means decrease opposition do it by all means but you must go slowly. Personally if I were legislating for my own community I will say make it 18 or 19 straight-away.

Q. The last amendment was in 1891 barring this 1925 amendment which you say is not known to people in general. So that the period between that amendment and to-day is about 40 years.

A. The wheels of civilisation have been quickened of late.

Q. And since you say during the last three or four years' female education has made very rapid strides it means that these four years may be equal to 12.

A. It is only 3 years that you legislated and raised the limit to 13. You should wait a little longer.

Q. May I understand whether this amendment of 1925 is known to people?

Q. Am I correct when I say that once you held the opinion that 13 should be the age limit all round?

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A. It is only 3 years that you legislated and raised the limit to 13. You should wait a little longer.

Q. May I understand whether this amendment of 1925 is known to people?

A. No.

Q. May I then know your reasons for saying that we should wait a bit longer?

A. The thing is that slowly they will come to know.

Q. When people do not know about this amendment of the law what is the meaning in the argument that we should wait some years longer?

A. You should make it known.

Q. Do you think that is the right conclusion?

A. The only thing for Government to do in the circumstances is to spend, say, Rs. 5,000 for a cinema show and send that show out to rural areas and show them what are the evils of early marriage, what are the evils of early consummation and how the girl suffers and how the child suffers. Then they will think twice before they do anything of that sort. That is one way of doing it. Similarly posters or information should be given to them that consummation before 13 years is an offence and they will be trained. After 2 years if you raise it to 14 years they will not feel the pinch so much. I have looked at it from the practical point of view.

Q. Supposing there are particular areas in India like Punjab where there is not so great opposition, would you give this option to particular Provinces?

A. I am strongly opposed to this preferential treatment. You should have one law for everybody.

Q. Then you would like that for the backwardness of certain Provinces, other Provinces should also suffer?

A. I do not like that they should suffer but when you are legislating you have certain other considerations. The question is that all the different communities should advance together and some of them will have to slow off for the benefit of others.

Q. You have said that 16 to 20 is the age which you would prefer for the present. Would you prefer any provision in the marriage law regarding the invalidity of marriages?

A. I would not.

Q. In England if a person goes to a girl at 13 he is guilty of felony so that the Age of Consent is 13. If the girl is 18 years old even then a person is guilty of misdemeanour. Under the present American Law also a person whether husband or otherwise is guilty of misdemeanour if he has intercourse with a girl of 18. Would you like to have a similar law in India also?

A. No. As a matter of fact we have not got those conditions also.

Q. You do not think that the conditions of India and England in this matter are the same?

A. Nobody thinks that.

Q. So far as America is concerned your opinion is the same?

A. I do not know about America.

Q. So far as these two laws are concerned—American and English—would you not like to have analogy from these two laws?

A. It is no question of analogy. There are certain principles which you may safely refer to but there are certain principles which you may have to test.

Q. In reply to question No. 5 you have said that girls attain the age of puberty from 11 to 14 years. Now you propose that the Age of Consent should be 13. It would follow that there will be pre-puberty consummation?

A. No, it does not follow at all. If you take hundred girls, one of them might show signs of puberty at the age of 11. I do not say all the hundred will show signs at 11. Even if they do they will be weaklings. There are other provisions and safeguards to be taken into consideration. If he co-habits there is a great risk of injury to the girl and to her progeny. The same argument will not apply above 13.

Q. Do you not think that 14 is the proper age instead of 13?

A. I think 18 is the proper age. What I say is that taking into consideration all the circumstances it would be better to fix it at 13.

Q. If doctors are of opinion that if a girl becomes a mother at the age of 14 she will sustain injury, would you change your opinion?

A. If the doctors are unanimous you do legislate but you would never find them unanimous.

Q. From your point of view would you raise it to 14 if the doctors fix it?

A. All will agree that the age of 14 is such that no girl should be a mother at this stage. I say there is a chance of risk but taking all circumstances into consideration we should wait.

Q. Don't you think that if we have a provision like the Age of Consent it will be a check upon some husbands?

A. It will not be a check at all. It will only mean that you will have many more crimes undetected. If you raise your age of marriage it is all right but if you are not able to do that it is a dead letter and it is against the principle of law to have such dead letters.

Q. Would you like the age of marriage and the age of consummation to be the same or approximate?

A. If I had to legislate I would first of all see whether I can raise the age limit of marriage, and then raise the Age of Consent to that extent. When I am considering the question of the Age of Consent I would see that if the age of marriage is fixed at such and such an age and if a husband and wife are allowed to live together I should then raise the Age of Consent a little higher. Then I will decide after weighing *pros* and *cons* what that Age of Consent should be. I suppose that the offences relating to the age of consummation are very difficult to detect. Even if the age of marriage is fixed at 12 you can safely continue the Age of Consent at 13 so that in the restraint of one year parents may keep them aloof.

Q. May I request you to forget that there will be any opposition. What age would you then suggest for marriage of girls?

A. Assuming that nobody opposes I would put the age of marriage of girls at 16 which I think is the general opinion of everybody. If I had no opinion at all I would put it at 18 if I had the power in me to enforce the law. With regard to enticing away I will make it 21. But this is if there is nothing else.

Q. Now you fix the age at 15 because you think that to be the menstruation period.

A. You cannot decide a particular age by one factor. I have taken into consideration several factors. One may be early menstruation, but the other is our power to prevent and punish offences and the results of those punishments. Taking into consideration all such cases I will fix 15. You have so far done nothing to inform the people of your law and the 3 years since the amendment have practically been wasted. Therefore it is now for you to inform the people of your law before you go a step further. If these 3 years had been utilised in social propaganda it should have been brought home to them that early consummation is bad, you would have been justified in going a step further. You have done nothing, your law has been a dead letter. You must now wait for 3 years.

Q. In answer to question No. 12 you have said that early marriage and early consummation are responsible for maternal and infantile mortality.

A. Consequence of early consummation has been very serious.

Q. Do you also think that attainment of puberty is sufficient development for consummation of marriage?

A. I do not think it at all; the sign of menstruation does not mean that she is fully developed.

Q. If you were otherwise to ascertain the age, there would be no difficulty.

A. In the first place they should be sufficiently intelligent and educated to know what the age of the girl is, secondly, they must know that consummation before that age is an offence. If you can provide these two factors you can legislate, but if you do not you will be punishing innocent men.

Q. May I take it that if there are a few cases of punishment the other people will take their lesson easily?

A. In the first place you will have a great difficulty. I know of a case myself where every witness turned round and gave an explanation to show that there had been no cohabitation and the injury was due to certain other causes. Fortunately the jury in that case was very intelligent and they accepted the statement made before. But that is a rare case. Ordinarily when the witness has changed the husband gets off. The proof of age is such a difficult question. I know of so many cases. In one case the certificate of birth shows that she was about 11 or 12 but still the civil surgeon was positive that she was grown up and under 18.

Q. Even the conviction or prosecution in such cases will give better publicity and the propagation of the law will be carried out?

A. Where is the use of such publicity where the majority of the masses are ignorant and do not read newspapers.

Chairman: I understand that your opinion is that a girl under 16 cannot safely be a mother.

A. That is exactly what I would say. If a girl between 13 and 16 gives birth to a child it is very likely that the child would not be as healthy as it would be if it is born when the mother is above 16; or it may be that the mother herself may suffer if she conceives when she is below 16. But you have also to take into consideration the fact that even if the girl is above 16 the child may be a weakling. You cannot say positively that if the mother has attained the age of 16 the child is necessarily going to be healthy or the girl is not going to suffer. Nor can you say the other way. You can only say that the chances of injury to the child and the girl, if the consummation takes place between 13 and 16, are greater than if consummation takes place later. But the risk that you run by allowing consummation over 13 is less than the misery which would otherwise be caused.

Q. Apparently you are assuming all along that we have only the Age of Consent and no marriage legislation.

A. I say you would not be able to fix the minimum age of marriage by legislation. I see shoals ahead.

Q. Are you aware that there is Sarda's Bill in which it is proposed the age for marriage be fixed at 14 and 18 for girls and boys respectively?

A. But you know there has been opposition also from the Mohammadan quarters, and you have read Pandit Malaviya's note of dissent.

Q. But suppose Sarda's Bill is passed, would you fix the age at 14 and 18 then?

A. *Ipso facto* it follows. If you say there will be no marriage below 14 there cannot be any consummation below that age. In order to bring your Penal Code in line with the Marriage Act you may have to alter it. Why I have said 12 and 16 is because you will not be able to carry the other thing. If you cannot legislate and fix the marriageable age at 14, because there are certain weighty objections to it, the question is what is the best way of gaining your object. Then I say there are certain other things which you might possibly be able to do and over which there will not be any opposition. If you are going to allow the marriages to take place at any age then you can at least say that under no circumstances should the husband be more than 16 if the girl is 12 and no father would object to it. The seriousness of the objection would disappear. If you proceed cautiously, in another ten years you will gain your object. For these ten years you will have to go cautiously and prevent such injury as you possibly can.

Q. But the age of 12 and 16 might not as well be legislated upon, because 12 is an age at which consummation is prohibited. If you fix the age of marriage at 12 this will not achieve the objective of the reformer. Is it not?

A. Though you may not be able to attain your object, i.e., raise the age of maternity, yet you will be able to attain certain other objects which are also necessary. It will be useful for certain other objects. It will prevent early widowhood.

Q. Do you concede then that by fixing 12 and 16 you will not gain the main object?

A. You cannot. But it may be, if the girl is married at 12 and consummation is delayed for two or three years. I know in certain cases where marriages have taken place when the girl is 12 and perhaps older, consummation has been postponed even for 5 or 6 years. I would not say that your main object would be gained by this legislation. But it will gain certain other subsidiary objects which will pave the way for your main object.

Q. You have said, "in this connection I lay great stress on the fact that unless legislation is slow, it will work a greater evil among the illiterate masses both Hindus and Mohammadaus in this province than the chimerical good that is likely to follow". What exactly do you mean by this?

A. There are certain principles of legislation and you find them in Bentham. It is stated here that no punishment should be provided for where you think that the punishment would be misapplied, would be inefficacious, would be superfluous and where it would be too expensive. (Here the witness quoted certain passages under each of the above four heads from Bentham's Legislation, page 322.) The majority of the people in Sind are illiterate. They cannot give their exact ages even. If you ask "what is your age" the reply will be, say, "10 years", and then when you ask "how many children you have got" the reply would be "3". They have got a certain moral code of their own. They have learnt, specially most of the rustics, that they should not touch a woman unless she has attained puberty and they practise that. If a law is made that a wife is not to be touched until she has attained 16 that will only remain a dead letter. In the first place how are they to know that there is any such law. It will take some years before they come to know of it. Then they must know when the girl is 16 years. How are they going to find out that? Take the case of marriage. Certain communities believe that marriage should take place at an early age. They believe that under no circumstances should she be kept at the house of her father when she has attained puberty. If you legislate and say that they must wait till a later age they will not know the law. If you punish them for having performed the marriage below the prescribed age that would be rather hard upon them. They must know the law. Then they must know the age of the girl.

Q. But will not that objection equally apply to 12 and 16?

A. 12 is an age which approximates puberty more than any other age. If you ask a village man the age of the girl and if she is 8 or 9 he will say that this girl is *masoom*, i.e., has not reached the age of 12 and won't give the age.

Q. Your opinion apparently is based on the fact that there will be great opposition to anything over 12 and 16.

A. Yes.

Q. At the same time do you concede that it will not affect the chief object in view?

A. It will be a stepping stone to it. It will achieve several other objects. It will prevent younger girls becoming widows.

Q. Evils of early maternity on one side and the opposition of the orthodox on the other side, which would you advise the Government to weigh down in the scale?

A. I would advise the Government to proceed very slowly. Even in America and England the age is 12 years. (The witness quoted here from American Law and Procedure, Vol. II, 1917, page 297.)

Q. There may be only one case out of 100 where a marriage takes place when the girl is only 12. There may be stray cases. In England I have not heard of marriage below 15.

A. That may be. The law is there. (The witness quoted here from the same book the reason that Americans give for maintaining that age.)

Q. The law of Age of Consent has been ineffective all along and if you raise the age it will still be ineffective. Would you not therefore advise the fixing of the age of marriage at 14 and 18?

A. Not at present.

Dr. Beadon: Is there a great deal of sale of minor girls in this part of the country?

A. I must explain that a little in detail. There are certain communities in Sind where there is scarcity of girls and men cannot get wives. It was discovered about 10 years ago that there were certain rogues who formed into parties and abducted girls from different parts. They kept them with themselves for two or three years till they lost all connection with their parents and then attempted to sell them. They took a price and gave the girl in marriage. If they went to a Mohammadan they dressed themselves like Mohammadans and if they went to a Hindu they pretended to be Hindus. In this way they got money and cleared out. During the last 8 or 10 years the police has been vigilant and there have been several cases where they have traced these persons and they have been convicted. We are giving very severe punishments in such cases. I know of a case where a Hindu widow of about 18 was induced by a Mohammadan to leave Seva Sadan, Bombay. He went and lived near Seva Sadan. He dressed himself like a Hindu and induced the girl to leave Seva Sadan with the object of getting her married to a Hindu in Karachi. She had ornaments which that man took away. He took her to a Hindu temple and attempted to sell her to a Hindu. But he could not. She said she wanted to go back. He took her back to Hyderabad by train. They stayed there in a Dharmshala. There they got into a wrong train and she was taken to Mirpurkhas. There the girl was taken to the house of a Mohammadan and drugged. After drugging her she was put into a car and taken to a jungle. In the meantime it was arranged to sell her to a Mohammadan. That Mohammadan was very particular to get a declaration saying that she was unmarried. That Mohammadan was very cautious. He said to these people "I don't know you". "You must get attestation of some fellow whom I know". The man who helped them in this respect was a small zemindar of the place. They got 700 rupees and bolted. After 5 or 6 days the girl was able to send a chit saying that she belonged to such and such place in Gujrat. Investigation took place but the rogue could not be traced. That zemindar was however traced. The girl appeared to the police to be under 18. The man who had bought produced evidence to the effect that she was above 18. The husband was released but this zemindar who had signed was convicted of abetting. These cases do happen even in the case of aged girls. In this case the girl was proved to be over 18 and she could be easily duped. There are several instances. There was another case which came to my notice about 5 years ago. The facts are not so clear in my mind now. In that case there was a Hindu *retagi* and two other Mohammadans. They had a conspiracy and brought some girls from Rajputana. They were caught and were each given 5 years' imprisonment.

Q. In these cases are girls sold for marriage?

A. Yes. They go to those communities where girls are scarce.

Q. In your experience is there sale of girls for immoral purposes also?

A. But we have now the Bombay Prostitution Act and that is a sufficient safeguard.

Q. One of the witnesses has told us that even children of 8 or 9 are sold to brothels. Is that correct?

A. The police are very vigilant in towns. I don't think you have those cases now. That may have been true 5 years back.

Q. To your knowledge do many cases come to court?

A. There were many cases sometime ago. I am only speaking after 1925-26.

Q. Could you say how many cases a year?

A. No, I could not say that. The magistrate tries these cases and where there is a conviction the appeal comes to us.

Q. How many appeals do you get in a year?

A. I am not doing appellate work now, but about 8 or 10 appeals come in a year.

Q. Will it be correct to say that the conviction or prosecution in such cases will give greater publicity to the law?

A. What is publicity where you have the majority of cases undetected. Even in Karachi City probably except about 6 or 7 thousand people who read newspapers nobody knows what happens in courts. The expenses in connection with the publicity will be great also.

Q. Will not the trial or the conviction be sufficient propaganda?

A. Nobody will know it. The publication of the conviction in the papers will also be of no use, because ignorance here is so great. You might see how much it is from the figures I have given.

Oral Evidence of Haji ABDULLA HAROON, M.L.A., Karachi.

(Karachi, 3rd October, 1928.)

Chairman: Are you largely interested in social work amongst the Mohaammedan community?

A. Yes.

Q. Do you do any propaganda work?

A. No. I am only a member of a registered Association and in that association I am doing work. The association maintains an orphanage and boys' and girls' schools.

Q. Do you belong to the Kachi Memon community?

A. Yes.

Q. What is the total number of your community in Karachi?

A. Three or four thousand.

Q. Are they generally engaged in trade?

A. Some are engaged in trade, but most of them do manual labour.

Q. Can you tell us the conditions amongst the Kachi Memon community only or amongst all kinds of Muhammadans?

A. I can say somewhat about Muhammadans in general and Kachi Memons in particular.

Q. Is Karachi the home of the Kachi memons or is the population mostly itinerant?

A. Karachi is the home of 75 per cent. The remaining 25 per cent. are itinerant.

Q. Can you tell us what is the marriageable age amongst the Kachi memons?

A. 25 years back there was a custom to marry girls very early owing to economic conditions. For instance if a boy were married in a house his

sister would also be married at the same time to save expense. But now girls in our community are not marrying before 16 or even 18.

Q. Do you think that the girls attain puberty earlier?

A. I do not believe they attain puberty before 12 or 13.

Q. Is there usually any interval between the marriage and consummation?

A. Yes, about three years.

Q. You think that marriages are not generally performed before 13 and those cases in which it is performed earlier are exceptional and are due to economic causes?

A. Yes.

Q. Does your community believe that there are any Quranic injunctions with regard to the marriage of Mussalmans?

A. Of course our community are not having much of theological education, but as far as I know there is no Quranic injunction.

Q. Do you think that the Age of Consent law is known to your community?

A. I do not think so. However it does not affect them.

Q. With regard to other communities amongst whom early marriages take place do you think we should have a law penalising marriages below a certain age?

A. I think if such a law were passed there would be a great row in all the communities. I know something about Hindu communities. I think that the Lohannas and other communities will not obey the order. There will be dissatisfaction. My opinion is that legislation on the subject if it should be effective must make provision for a department like the C. I. D. Otherwise it will not succeed.

Q. You say that marriages amongst your community take place at the age of 16. Do you think there will be any objection on their part to fixing the marriage age for girls at 14 and boys at 18?

A. Lately some Maulvis and Mullas issued a Fatwa saying that Government should not fix the age of marriage. On account of religious objections they might object.

Q. But according to Muhammadan law there is no age fixed for marriage. Therefore if the law fixed an age for marriage it will not be against Quranic injunction. Why then should there be any objection?

A. When the legislation on the subject was in the Assembly we received complaints from various parts of India saying that this law should not be forced on Muhammadans.

Q. Supposing such a general law is enacted, would you like the Muhammadans to be exempted from the operation of the Act?

A. My personal view is different. I have personally no objection to fixing a marriage age. But there are people of other religions who might object.

Q. Are there not many points in the Kaehi Memon law which run counter to the Islamic law?

A. Yes; mostly in money matters and cases of succession we are not guided by Islamic law. But there is already a movement to the effect that we should be guided by Islamic law.

Mrs. O'Brien Beadon: Have you got a girl's school under your patronage?

A. Yes.

Q. What is the age of the girls going to the school?

A. Girls up to the ages of 12 and 14 are going to the school.

Q. For how long has the school been in existence?

A. The building was built in 1923. But the school was established in 1915.

Q. Have the girls been going to the school since 1915?

A. Yes.

Q. How many girls are there on the rolls?

A. About 115 to 130.

Q. For how many years have you had this number?

A. About 4 or 5 years.

Q. We have been told that there is danger of such girls being abducted on the way. Is there any such danger in this case?

A. No; not in our school.

Q. Is the school very close to the community?

A. Yes; only a few yards from the locality.

Q. Have you any such reports from the other schools in Karachi?

A. There is not much danger in Karachi. However the parents are afraid. They do not like to send their girls to school after 15. No actual cases have however come to court.

Q. You say that girls in your community marry between the ages of 16 and 18. For how many years has this been the custom?

A. Since the last 15 years. This is due to social advance.

Q. At what age do the boys marry?

A. About 19 or 20.

Q. We are told that there will be a great deal of immorality both among boys and girls, if you fix a fairly high age for marriage. Have you found any special trouble like that?

A. In our community we do not find any immorality. In my opinion 19 and 20 in the case of boys are not so high as to create any danger. It all depends upon the society the boys keep and not on the age fixed.

Q. You say that for economic reasons in some cases girls are married at an early age. In such cases does consummation take place early?

A. No; because the girls remain most in their parents' house a long time after the marriage. In such cases marriage is only nominal.

Mr. Bhargava: When the Sarda Bill came up in the Assembly some Muhammadan gentlemen were also sent to the Select Committee and at that time in the Select Committee there was no objection raised on behalf of the uneducated Muslims and when the age of marriage for girls was fixed at 14 that age was fixed with special regard to the sentiments of the Muhammadans and Christians. Even now I understand it is the opinion of the Muhammadan members of the Legislature, that the Act, if any, should be of general application. But you say that the uneducated Muhammadans do not want it and that Hindus will also raise some protest. Do you not think that for the sake of national advantage we should rather face opposition than not pass this Act?

A. At present educated Indians are influenced by Western civilisation and it is the duty of every Indian to support this Bill. I merely said that there will be much opposition and discontent among the people.

Q. Do you think this law will lead to riots?

A. No; it will only be limited to some talk.

Q. Are the people in the rural areas of Sind literate? Are there many people who cannot count up to ten?

A. The number of such people will be very few.

Q. Do you think that fixing the Age of Consent will be a hardship on these people on account of their not being able to count their ages?

A. No.

Q. You say that if 16 is fixed as the marriageable age it will not be a hardship on your community. Do you think that if 18 is fixed as the Age of Consent in non-marital cases it will be taken by the people in good grace?

A. Yes.

Q. Would you further recommend that some provision should be made in respect of unequal marriages, for instance that a man of over 45 should not marry a girl below 16?

A. Yes, that might be done. I do not believe parents would be willing to contract such unequal marriages unless there is some real difficulty. But personally I do not like many laws in the country.

Q. Supposing the Age of Consent within the marriageable state is 16 and the marriageable age is 14, then it follows that there will be some cases and some of them will come to court. In such cases to whom would you like to give the power of prosecution and investigation? Now three courses have been suggested to us. One is parents or guardians may be given the power. Secondly a suggestion has been made by some witnesses that vigilance societies might be organised and power given to them. Thirdly the District Magistrate should be armed with the power to make *ex-parte* enquiries and with his sanction cases should be launched against the offenders. What would you suggest?

A. I believe in the first two. Either the parents or guardians of the girl should be given the power or the girl herself, or it should be entrusted to some society which is working for the benefit of Indians.

Q. Do you think that these societies should be registered?

A. Yes. Unofficial bodies should not be given power.

Mr. S. C. Mitra: I understood you to say that some Mullas or religious people are creating some dissatisfaction. Is it not correct to say that these people would not object to legislation of this kind unless some people put it into their heads?

A. Yes.

Q. Do you suggest that in the Quranic scriptures there is nothing for or against fixing a marriage age?

A. No; there is nothing.

Q. Shall I be correct to infer that in some of the Mohammedan communities marriages take place late in life and this is especially, so in the more advanced and richer communities?

A. Yes. It is usually higher than 16.

I want to clear one point here. There is nothing in the Quran fixing the marriage age. But a girl if she is married before puberty by people other than her father can repudiate the marriage on attaining puberty and she can be free.

Q. Are cases of rape and seduction frequent in this part of the country?

A. In Karnali there are none. That might be in some villages.

Q. Can you suggest any difference in the procedure in the trial of marital and extra-marital cases?

A. I cannot suggest any.

Q. It has been suggested by some of the witnesses that girls would not be willing to go to court and expose themselves. Would you suggest any difference in procedure in such cases?

A. People might come forward with cases if court trials are held.

Q. Do you not feel that if there is a proper consent law that would have propaganda effect on the people and prevent cohabitation before a certain age?

A. I think propaganda will do more good than legislation.

Q. But will not the legislation itself be propaganda?

A. Yes.

Q. You said that there would be some difficulty about religion. I take it, you mean that it is the Mullas who will raise the cry of religion being in danger and will create the difficulty, but otherwise there is nothing religious in it. Is that so?

A. Yes, that is so. The Mullas say that nobody has any right to fix the age in case of marriage.

Q. Do you suggest that the Age of Consent within the marital state should be 16?

A. No; the Age of Consent within the marital state should be 14 and in extra-marital cases it should be 18.

Q. In your experience in communities in which early marriage is prevalent does consummation take place immediately after marriage without any interval?

A. There is not much interval. In fact they necessarily follow.

Q. What is the age at which girls ordinarily attain puberty here?

A. It is between 11 and 15.

Q. Medical opinion says that a girl is not fully developed as soon as menstruation commences, but that two or three years should elapse before there can be full physical development. What is your opinion?

A. I cannot give any opinion on that point.

Q. Assuming that what medical opinion says is true, would you modify your statement and fix a higher Age of Consent for married girls?

A. I cannot assume any such thing. My opinion based on personal experience is that 14 for consummation is a good age. Even now the mother and the mother-in-law of the girl, if they find that even at 14 or 15 the girl is not fit for consummation, do not bring it about. I do not therefore think there will be any harm.

Mr. A. Ramaswami Mudaliyar: Outside your community are there cases of early marriage amongst Mussalmans?

A. In particular communities on account of poverty marriages do take place at 10 or 12. But such cases are not very large in number. These are exceptional cases. Generally they do not marry girls before 14.

Q. In these exceptional cases have you come across any case in which the girl repudiated the marriage?

A. No.

Q. That right has therefore never been exercised in your community?

A. No.

Q. Have you heard of any objection to fixing the Age of Consent or cohabitation?

A. No.

Q. So far as Hindus are concerned, are you aware that in this part of the country early marriages are very common?

A. So far as I know they are not very common. It is common amongst people who believe that their girls should be married before the 12th year. The Lohannas do so mostly in Karachi. Outside Karachi I do not know the practice.

Q. Are the girls sent to their husbands' houses immediately after marriage?

A. No.

Q. Not even amongst the Hindus?

A. No.

Q. Is there any system of mass marriages here, that is to say, in one particular year a number of families perform marriages?

A. I have heard that that takes place in Gujrat and Kathiawad, but not in Karachi. Sometimes marriages are stopped for one or two years if the Pundit says that any particular year is inauspicious.

Q. Do these marriages take place with girls of 6 or 7, i.e., infants.

A. I could not say. I don't know about Gujrat and Kathiawad.

Mr. Kadri: I take it that you are a Sunni.

A. Yes.

Q. The age of puberty laid down by Abulhanifa varies from 12 to 18.

A. I cannot say.

Q. You say consummation of marriage before the age of 14 or even 16 is not common.

A. It is not.

Q. The provision that the girl has the "option of puberty" would seem to imply that consummation or if possible marriage should be postponed till the girl attains puberty. Is it so?

A. Yes.

Q. Now there are many cases regarding which there is no provision in Koran, but still as a matter of convenience we are following a certain practice. For instance, the Koran does not say that you should not say your prayer at a particular time. But as a matter of fact we all say our prayers at one particular time, and there is no objection to that. So that our religion is not inelastic. It is a progressive religion. If the Mullas and the Moulvis bring forward any objection of that kind, do you think, it should find favour with the educated section?

A. At present the educated class will favour the fixing of age, but there is the possibility of discontent among the Mullas and Moulvis.

Q. Is it not the duty of the educated Mohammadans to counteract the effect of those Mullas?

A. Of course they are counteracting their effect very much at present. They are fighting with the orthodox people. But it may take time. Until education spreads this sort of propaganda is bound to take time.

Q. You quote the instances of several saints and holy men who married girls of tender ages. So far as my study of Islam goes there is only the instance of the Prophet having married Bibi Insha. But there were very special circumstances under which he had to do that. There are the examples of the other wives of the Prophet who were fully grown up when they were married. Would you follow the solitary example of His having married one wife at a very tender age or would you follow the other examples.

A. Of course we will follow the other examples.

Q. Are you in favour of registration of marriages?

A. We tried in Bombay Council that some such law should be made. But we could not succeed. All the same I think it would be a good thing.

Mr. Kanhaiya Lal: Do you think that there should be a period fixed which should elapse after the first appearance of the menses before a girl is approached by her husband?

A. I cannot give any opinion on that.

Q. You have said that the age for marital cases might be fixed at 14. Would that protect the girl and her progeny sufficiently from the debilitating causes of which we hear so much these days?

A. I think, at present in good families girls get plenty of protection from their mothers-in-law. If you fix the age by law I don't think they will get much protection. There may be some brutes, but in respectable families I find, girls are getting proper protection.

Q. According to certain medical authorities the developmont of a girl is not complete till the age of 18. In view of this would you not recommend a higher age limit?

A. I quite agree that a girl is not fully developed till she is 18. But at present the circumstances of the country are different. There are some who want to marry their girls before 12. I quite agree with the medical view and I don't like that my daughter should be married before she is fully developed.

Q. As a first step you recommend 14, but later on it might be raised.

A. Yes.

Q. There has been a complaint that the law regulating the Age of Consent has been inoperative and cases are not brought to light. Can you suggest any measures for bringing these cases to light and making the law more effective?

A. In my opinion it is only propaganda and social work that can put a stop to all these evils. Legislation would not do much good.

Q. Do you think vigilance societies will be of any help in these matters?

A. They can help a lot, if they want.

Q. Would you make these vigilance societies communal or local?

A. At present it is very difficult to establish communal societies like that. They should be local. There should be local societies containing representatives from different communities in towns and rural areas. They must be registered.

Q. Why should registration be needed, if the object is not remunerative.

A. It is necessary that they should be registered. There must be some power behind them.

Q. There will be so many societies needed. In Sindh, if you have 100 societies, all these will have to be registered. They will have to submit regular returns and keep registers and lists of members and such other things. All that will mean great expenditure. The greater the complexity the greater the difficulty in the way of their working.

A. Government can make rules relieving them of some of the expenditure. Smaller fees can be charged in their case.

Q. Would the Municipal Board be able to constitute vigilance boards for this purpose out of their own members?

A. Yes. We have already started a committee for a very similar object in Karachi.

Q. Would you give the power to social reform organizations to look after these cases and make reports?

A. I want that they must be good societies and we must see that they are working properly.

Q. Would you insist in their case that they must be registered?

A. Registration only means that the members understand that they are responsible. Otherwise what we find is that a society is formed and the very next year it is abolished because it is not registered.

Q. Have you got a system of village panchayats in Sindh?

A. There might be private panchayats. But there are no panchayats, recognised by law.

Q. But there are panchayats in various towns.

A. Yes.

Q. Are they working satisfactorily?

A. They have got no rules and regulations. Some headmen sit together and decide a case. They do whatever they like.

Q. Would you like to entrust the work of reporting cases of infringement of the law to these panchayats?

2. Why not, if they want to carry on social reform work. Registration of these panchayats, in my opinion, is necessary.

Q. On whom should the burden of reporting marriages lie?

A. Parents and guardians of the marrying parties and also on the priest officiating.

Q. Who should be the registering authority?

A. Municipality or the local board.

Q. Would you recommend that these reports may be made to the Tahsildar or some other executive officer?

A. I do not believe in them. They are very autocratic people.

Q. Would you further recommend that a certificate should be issued by the registering authority to the party reporting the marriage, giving the ages of the couple, their names, and such other particulars?

A. Yes.

**Written Statement, dated the 26th September 1928, of Rao Bahadur
HIRANAND KHEM SINGH, Hyderabad, Sind.**

1. Yes, there is considerable dissatisfaction among the thinking people in regard to the provisions of Sections 375 and 376 of the Indian Penal Code.

2. The circumstances which justify the amendment of the two sections are that (1) in case of strangers, the age of 14 years fixed for making the consent valid is in the majority of cases too short to presume that the young girl is in a position to realise the consequences of the act to which she gives her consent. (2) In the case of her husband, a young girl of 12 in many cases has not reached her puberty, and in those where the first sign of puberty has made its appearance, the permission of the law to cohabit with her is fraught with the most serious consequences to her life, to her health and to the progeny which might be the result of such an early and immature intercourse.

3. The crimes of seduction and rape are not always reported to the police. Judging therefore by the actual cases brought to Court, they may be said to be not frequent, but otherwise they occur pretty frequently, and it is most necessary that the law should be put on a more sound basis to punish when such cases are brought to notice. The false sense of shame which precludes parents and others from exposing such acts will disappear with the advance of the times, and mere knowledge that consent under sixteen years is invalid, is likely to deter many from indulging in sexual immorality. The brothels in many parts of India are full of girls under sixteen or even fourteen, and so great is the pruriency of evil minded people, that the younger the girl, the greater the price they are prepared to pay. It is most necessary to protect girls who are emerging into womanhood from the cruel lust of men.

4. The amendment of 1925 has produced no such result as is indicated in the first and second clauses of this question. It has no doubt stimulated public opinion which has been demanding the raising of the age to 14 years. To make the law effective or rather to make it superfluous, only course is to prohibit marriages of girls in India below the age of 14 years, but until that is done, it is essential in the interests of the virility of the race, to prohibit husbands from rushing into conjugal felicity at the initial stages of the girl's puberty. They must wait until she has passed the age of 14 years.

5. The usual period at which the first menstruation occurs is between the age of 12 and 13. In this part of country it does not differ in different communities.

6. In communities which are advanced in education, cohabitation in marital condition is almost unknown before, soon after or before the girl has attended 13 years, but in the mofussil, where literacy has not penetrated, where marriages are the rule and unequal marriages are sometimes met with, cohabitation takes place before the girl has reached 13 years, and soon after the appearances of puberty. Without the marital state, brothels and other houses of ill-fame are existing where girls of 12 or even under are forced into illicit intercourse. Very rarely indeed do cases of this nature come before the Court.

7. I must answer this question in the negative so far as my part of the country is concerned.

8. The garbhadan ceremony is not performed in this country at all.

9. If by puberty it meant, the first menstruation of a girl, then most certainly I do not regard the attainment of it as a sufficient indication of maturity for consummation. I am of opinion, that at least a year must elapse after the first sign of puberty, to permit of a sufficient development of her parts before she can be considered fit to undertake conjugal duties. There are girls and girls. Some are precocious and some behind hand. but an average girl seldom matures for her marital duty before she has completed 14 years. The joy of maidenhood, except in educated classes, seems to be unknown in India, and how much so ever I would wish that no girl below sixteen should enter her husband's chamber, I think it is a sufficient concession to orthodoxy to fix the age of a girl-wife at 14 before permitting a husband to have intercourse with her. The weaklings, whether boys or girls whom you meet by the thousands in any Indian city, are the fruit of early consummation, and the race is to be saved from early death and a long drawn sickly life, improvement must take place at the source.

10. In India however tropical the country may be no intelligent consent can be expected from a girl below the age of 16 to an act which involves consequences lasting upto her life-time.

11. I do not want to cite any instances, but it is written on the wall and he who runs may read.

12. The answer is in the affirmative. Early consummation sells infantile mortality, but leads to physical and intellectual deterioration of the race.

13—16. Not answered, as unnecessary from this part of the country.

17. In the present state of the Indian Society specially of that large section which is not yet advanced intellectually, I would differentiate between the marital and non-marital offences. I would consider the maximum punishment of six months, for marital offences quite sufficient and ten years as the maximum as already prescribed in non-marital cases.

18. I would suggest a trial in Camera in marital offences in which a summons should issue in the first instance, but the case should not be compounded and bail should be allowed upto conviction.

19. No.

20. No. Penal legislation cannot be so effective as legislation fixing the minimum.

If by public opinion is meant, the intelligent public opinion, then it certainly favours the legislation for fixing a minimum age for marriage, but if public opinion of the illiterate masses is accepted, they will not favour any legislation penalizing a husband for having premature marital relation with his wife.

21. If we wait till the social reform has penetrated the huge illiterate mass, in which everything has been fossilized by custom, we shall have to wait till doomsday. In all countries whether civilised or uncivilised it is the few wise who legislate, and not the multitude which as Soerates says, consists of fools.

Oral Evidence of Rao Bahadur HIRANAND KHEM SINGH, Karachi.

(Karachi, 3rd October 1928.)

Dr. Beadon: In answer to question No. 6 you have said, without the marital state, brothels and other houses of ill-fame are existing where girls of 12 or even 11 are forced into illicit intercourse. Are these cases numerous?

A. They are quite common if they are not numerous.

Q. Do such cases ever come to court?

A. Vory seldom.

Q. But why is that?

A. There is no agency to bring these cases to light.

Q. There is the police.

A. How many cases of theft are brought to light. The police people do not investigate. In Sindh the lower ranks of police are extremely corrupt. I do not expect that they will bring to light cases of this kind.

Q. How could this evil be stopped? Would you make any suggestions as to how the method could be improved?

A. Unless these brothels are brought under some kind of surveillance you will find it difficult to detect cases of this kind.

Q. In answer to question No. 12 you say "yes". Could you give us any cases that have come to your personal knowledge?

A. There have been so many cases. Well, I know of a case where a girl was married at the age of 11 or 10. The marriage was consummated when she was 13. The child she gave birth to died on the 5th or 6th day and the mother suffered for a long time, for about 3 or 4 months. That was the result of early consummation. Numerous cases of this kind occur when marriages are consummated at the age of 13 or a little over. It invariably happens that the child dies and the mother suffers. I have known of cases where a woman has been sickly all her life.

Q. In your experience the child is usually a weakling.

A. Sometimes it is a weakling and sometimes not brainy at all.

Q. In your opinion are those you have seen below the average either in intelligence or in physique?

A. That is my opinion. I see the boys in schools here are much more weaker than boys in England. In England you will find that they are strong, sturdy and rosy children. Here you find in Hyderabad that boys, even when they are in the 4th or 5th standard, are very weak and they have hardly got any muscles.

Q. But that may be due to climate.

A. But at the same time you find children in the same climate who are robust and strong. The children of these young mothers are more often weaklings than normal healthy children.

Mrs. Nehru: What is generally the age of girls who are seduced and abducted?

A. I know of cases where girls of 6 or 7 have been brought here. Sometimes they are older. They are brought here by seduction and sold out straight away.

Q. Even if the child is of 6 or 7.

A. She is sold straight away to somebody. He keeps her and maintains her.

Q. But the actual marriage takes place when she is grown up.

A. It may take place even at 6 but the consummation can only take place when she matures.

Q. Do you know any case personally?

A. I know of one case. In that case when actual consummation took place the girl was of 13 years. She was brought down when she was 6 or 7. Many girls are brought into Sindh from outside and where girls are scarce people buy them.

Q. In answer to question No. 3 you have said that the law should be put on a more sound basis. What do you mean by that?

A. At present the age for abduction fixed in the Indian Penal Code is 16. A girl at 16 hardly realises what she is about. I want that this age should be raised.

Q. Are you also in favour of raising the Age of Consent in marital and extra-marital cases?

A. Yes.

Q. What age do you recommend?

A. For the present as a concession to orthodoxy fix it at 14, so far as marital cases are concerned and fix it at 16 in other cases.

Q. Are there many orthodox people in Sindh?

A. Yes.

Q. Will they oppose this raising of the age?

A. I do not know whether they will oppose it, but they would not like it.

Q. But is there no fear of any very active opposition?

A. No.

Q. You have suggested a lighter punishment in the case of marital offences. Is there any change that you would suggest in the procedure of the trial?

A. I have said that cases of that kind should be tried in camera and summons should also ordinarily issue.

Q. Who, do you think, should be the complainant?

A. Any lover of equity and justice.

Q. If you leave it to anybody and everybody, nobody takes the trouble and no cases are reported.

A. I will leave it very wide.

Q. What do you say to the constitution of vigilant societies for this work?

A. Anybody who likes can take upon himself this task. Any society or any individual would do for the court to make a preliminary enquiry.

Q. But would you not like that these vigilant societies or panchayats should be given special powers of complaint?

A. No. Wherever there are two panchayats they are always at logger-heads. They want to pay off their old scores. Their organization is very loose.

Q. But don't you think that there is the risk of some people taking advantage of it if the power of complaint is given to everybody? Somebody who has got enmity with another fellow might lodge a false complaint out of malice.

A. Risk must be taken. Is there anything in the world where there is no risk? If the magistrate finds that the complaint made to him was through ill-will he has got the power to punish that man. If the magistrate finds that there is no foundation for the complaint the complainant can be tried summarily and fined.

Mr. Bhargava: You know in Sarda's Bill there are certain safeguards provided. Would you like that the head of the district be the only authority who could initiate prosecution in cases of rapes within marital relation? It is a very delicate matter relating to marriage.

A. He should be a first class magistrate.

Q. Do you not think that if a provision is made that the right of complaint is to be limited to any particular association alone the law will not be fully vindicated?

A. It won't be.

Q. As regards these organizations, do you think that the organization must have something official about it?

A. Well, these organizations can only be formed into large towns. So far as villages are concerned where most of these cases occur, there would be no organization at all and most of the cases will go undetected.

Q. Don't you think some amendment of the Municipal Act may be made and it may be provided that a statutory sub-committee of the Municipal Board may take this matter in hand?

A. So far as towns are concerned, certainly.

Q. And certain sub-committees of the local boards may also be invested with certain powers in this respect.

A. Yes.

Q. You have just said that you are in favour of raising the Age of Consent to 16, but as a concession to orthodoxy you would be satisfied if it is raised to 14. May I know if there would be any dissatisfaction if the age of 14 is fixed?

A. It may be, but it will be sentimental and will be for the time being only.

Q. Do you not think that any age above 12 would cause some dissatisfaction and the amount of dissatisfaction will not be proportionately greater if the age is fixed at 13 or 14?

A. It varies with people, but you must carry along the people with you. It must be gradual.

Q. Do you think that this present age of 13 is well-known among the people?

A. It is not known among the villagers at all. In the towns it is quite well-known.

Mr. Mitra: There is one view that as there are very few convictions under the law regarding the Age of Consent it is no use having the law. Do you agree?

A. No. There ought to be a law. Otherwise it may be misunderstood. It may be thought that in India a man is a free bird. You do not lay down for his information. The law must be there. Even Lord Macaulay when he first framed the Indian Penal Code put the age at 10. If there have been a few convictions it simply means that the law has been ineffective.

Q. In your statement you have said that the age for menstruation is between 12 and 13. May I take it that you want that a period of 12 months or so should pass, in order to allow the girl to grow into womanhood, before consummation begins.

A. As a concession to orthodoxy I say that the age may be fixed at 14 for the present. Otherwise I agree that some period should elapse before consummation begins. I don't expect however that there will be any loud and violent agitation just as we had in Tilak's days. Much water has flown under the bridge since then. People have been educated. There is not that illiteracy now. There will not be any agitation, it will be some sort of dissatisfaction. In order to pacify that and not allow even that dissatisfaction make itself heard or voiced forth, I have suggested the age of 14.

Q. Is it a fact that rural masses are very apathetic to all legislation?

A. They are not apathetic, but they soon get reconciled to an idea which they have realised is a good one.

Q. You are also in favour of some legislation fixing the age of marriage. What age do you suggest?

A. 14, for the time being.

Mr. Mudaliyar: If you fix the age of marriage at 14 would you fix the Age of Consent also at the same age?

A. Yes.

Q. Is not the orthodox opinion you are referring to really against fixing the age of marriage and not against consummation?

A. Yes, that is so. There are communities and communities. In certain communities marriage takes place at an early age, but the girl is not immediately sent to her husband's house. There are other communities in which she is immediately sent to her husband's house. She lives in the same house as her husband and naturally there is that chance of marriage being consummated very soon even though the husband may be much older than the wife.

Q. Do you mean by the deliberate choice of the parents of the boy?

A. The boy and the girl are there together and consummation takes place as a matter of course. It is not that they are urged by the parents.

Q. Is there any religious ceremony connected with consummation in this part of the country?

A. None.

Q. You have said in marital cases the maximum punishment should be 6 months. Would you give the same punishment whatever the age of the girl may be?

A. In brutal cases where the age of the girl is only 10 you may have a heavier sentence. I have not taken into consideration the fact that there may be brutal cases of that kind. I will make a difference in these cases. Under 12 the same punishment as is now provided for may remain, but above 12 I would fix the maximum punishment at 6 months.

Q. You have quoted Socrates and said that it is the few wise who legislate. Would you ignore the orthodox then?

A. You must carry the people along with it. A large majority of people reconcile themselves to legislation when once it is passed.

Q. Don't you think that legislation at frequent intervals in social matters like this would be mere harassing?

A. I don't think so. Reform in India is going ahead and with every step of progress you should have progressive legislation as well.

Mr. Kadri: May I know if you are connected with any social reform organization?

A. Yes, I am a member of the Hindu Social Reform Organization in my city, Hyderabad.

Q. Are you a lawyer?

A. I am not a lawyer at present. But I have been practising for 30 years. I have now retired from practice.

Q. You say very few cases of offence under these two sections have come to court. May it be due to the fact that there are very few cases?

A. No, cases are many but they are not brought to court.

Q. Is the offence common?

A. I should think so. Especially in the Hindu community in the villages.

Q. What is the general age at which cohabitation takes place?

A. On the first show of puberty. It is common about 11 or 12.

Q. In reply to question No. 7 you have said "I must answer this question in the negative, so far as my part of the country is concerned". What exactly do you mean?

A. I don't think that there is any injunction that marriage ought to be consummated either at puberty or before puberty. At least I don't know of any such injunction.

Q. In answer to question No. 10 you say "in India however tropical the country may be no intelligent consent can be expected from a girl below the age of 16". Would you raise it to 18 because that is the age of majority?

A. I think it should be raised to 18.

Mr. Kanhaiya Lal: You fix the age for marital cases at 14. Would that protect the girl sufficiently against debilitating causes?

A. Not sufficiently, but to some extent.

Q. The Medical opinion is that girls are developed and become fit for child bearing at the age of 16 or even 18. In view of this would you still recommend that consummation might be permitted at the age of 14?

A. Personally I should like to fix the age at 16 when development has taken place. But as a concession to orthodox opinion I have suggested 14.

Q. Would you be prepared to risk these injurious consequences both to the girl wife and her progeny?

A. For some time.

Q. You realise that there might be cases of a great disparity of ages between the husband and the girl and it might result in serious consequences.

A. The consequences would be the same whether the girl marries a man of 40 or a boy of 20, so long as she is mature.

Q. Would it not interfere with the education of girls?

A. Where education is given to girls there would be no cases of girls being married at the age of even 14 or 15. In places where education is spreading among the girls, you don't find any early marriages. For instance in my community you find that the girls are not married till after they have reached the age of 16 or 17 or even 18. I belong to the Amil community and education is fast spreading in my community. You find girls generally going up for their matriculation examination.

Q. You have suggested that Municipal Boards and Taluk Boards might be authorised to appoint sub-committees to act as vigilance societies. Would you give similar authority to social reform organisations in the country?

A. Yes, in cities where they exist.

Q. Should they be registered or unregistered?

A. Registered or unregistered it matters little. I belong to a registered association, and I know that registration involves a good deal of round-about business. The associations will have to send reports and accounts to the authorities concerned. There are many associations which are carrying on their work quietly and it will be a hardship to ask them to get themselves registered.

Q. Have you got panchayats in the towns and villages in Sind?

A. Yes.

Q. We hear that these panchayats are doing a certain amount of work in the way of settling caste disputes, business disputes, etc. Would you have these panchayats act as vigilance societies?

A. Yes; but almost all these panchayats are torn by factions.

Q. As a further measure it has been suggested to us that the parents or persons in charge of the girls should be made liable for abetment if they allow the girls to be sent to their husband's houses before the age fixed. Would you adopt that suggestion?

A. I would not venture so far.

Q. In non-marital cases would you recommend that the age should be 18?

A. Yes.

Q. Is there not then a danger that boys might fall a prey to temptation, coming from grown-up girls of immoral character?

A. You cannot help it. I would face risks of that character for the general good.

Q. You say that in marital cases no prosecution should be started without the sanction of a First Class Magistrate being obtained. Is there not a danger in such cases that the evidence might be meanwhile suppressed or might disappear and a failure of justice might ensue?

A. In cases like that you must take some risks sometimes.

Q. Should not an enquiry be started till sanction can be obtained?

A. I would not give powers to the police as they are constituted at present. If we get some improved police later on, we can think about arming them with such powers.

Q. What is the procedure you suggest?

A. A first class magistrate should be applied to for sanction.

Q. Will he start the enquiry?

A. Yes; he is bound to satisfy himself if there is a *prima facie* case.

Q. Would you recommend that he should continue the trial of the case himself?

A. It is a matter of detail. Either he may continue or he may send the case on to another magistrate.

Q. As regards the registration of births, have you got a sufficiently satisfactory system in operation?

A. In the rural areas it is not satisfactory. In the urban areas it is satisfactory.

Q. What are the defects in the rural areas?

A. The work is assigned to Tapadars or Talatis, men whose prime duty is to collect revenue for the Government. Their first duty is to collect revenue and in addition to these duties they are called upon to register births and deaths also. To do their duty they have to go on visits to different places. There is no compulsion on their part to report the births and deaths. The Tapadar has got to go and collect information, but he does his work imperfectly. As a matter of fact many births are not registered.

Q. Suppose we require the parents or guardians to make a report to the Tapadar, will the system work then?

A. The Tapadar is generally to be found at the headquarters, but not in the villages where he is supposed to be. Therefore to compel people to travel to the headquarters which will be sometimes 20 or 30 miles from their places would be looked upon as a hardship. I would therefore suggest that some thought should be given to the subject to find out an easier way of collecting the data for births.

Q. Have you no such idea at present?

A. It requires a little thinking and working out.

Q. Would you recommend registration of marriages by some duly prescribed authority?

A. The prime idea of registration of marriages is to keep a record of them. But if for the purposes of this legislation it is proposed to have a register of marriages, so that the ages of the boys and girls may be established it would serve the purpose.

Q. How would people like the idea?

A. The difficulty is that in villages you cannot get a reliable person to keep these registers. Also when the marriages take place in villages which are far removed from headquarters, it will be considered a hardship if you ask the people to travel to long distances and have the marriages registered.

Q. Would you recommend that the reports of the marriages might be sent by post?

A. There are no post offices in some of the villages.

Q. Would you recommend that the work of registration should be given to the Talatis?

A. They are very unsatisfactory people.

Q. Or to the Mukhi or Lambardar or headman of the village?

A. That will be quite feasible, if you make it obligatory on them to keep registers.

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Copy of Journal, Volume I, No. 1, filed herewith.

This was submitted by Mr. Buch in lieu of written Memorandum before the Committee.

Note.—Only necessary parts are translated.

Whenever any legislation to enhance the Age of Consent is contemplated, the occasion is marked by agitation and counter agitation for and against such measure, the nature of which is more journalistic than actual. The progressives hold forth that such enactments are effective in raising the Age of marriage. This contention is mainly true. But the raising of the age of consent is not a perfect remedy against child marriages. The conservatives hold that the higher limit for the Age of Consent is objectionable on three points: because it is against the Shastric injunctions, because it is against the wishes of the people, and because it puts every man of family within the power of ill-minded authorities. Nothing is of course, more easy than laying the charge of having carnally known one's wife where the bride at the time of entering her father-in-law's household is hardly 11 or 12 years of age. Even if the charge is not proved, the Izzat of the family concerned, and privacy of their home will be subjected to rude hands, howsoever, well meaning. To prevent such eventualities, the system of offering bribes is bound to be widely adopted. These and other contentions support the conservative view points. Besides, it is not so easy as one may think to produce evidence in defence of a charge of having carnal intercourse. In such cases, the most important evidence is of the girl concerned. Where the parents of the bride and the bridegroom are at variance, it is not unlikely that a girlchild of 12 years is coerced by one or coaxed by the other party and thus makes her evidence of little value, thus removing the best evidence for the prosecution from the category of "reliable evidence". This can be remedied by substituting the only independent and conclusive proof of carnal intercourse—the Medical opinion. In a country like India where lady doctors are not available everywhere, the securing of such evidence may be a difficult matter. Of course, the evidence of an elderly female relative as to the condition of the body of the girl, may be useful, but when the suspected motive in a case happens to be family quarrels, such evidence would not be reliable. Medical Examination then is the only reliable evidence in such cases. It is, however, very necessary that such medical examination must be held as early as possible after the event is alleged to have occurred. Dr. Taylor (Medical Jurisprudence) avers that even though the evidences of forced intercourse are conclusive as a rule, yet after some time their character becomes doubtful or nonconclusive. Especially when the girl concerned is used to cohabitation, the evidence of a single enforcement is very doubtful indeed

This discussion of evidences may be safely left to the experts. It only proves that there are greater difficulties in the way of legislation than one may think superficially.

But both the Orthodox and the Advanced seem to lose sight of the main point involved in this discussion. The Age of Consent actually should mean the age at which the girl can legally acquiesce to join in the sexual act on being invited to do so. The age of consent therefore should be that when the girl is physically developed enough to enter into such intercourse, and is mentally intelligent enough to understand the full purport of her action and its consequences. Laying stress on the physical development alone, the popular opinion has often regarded the onset of menstruation as the time when the girl is taken to be so developed physically, and also mentally. The Ancient Aryas, however, believed on Sushrat's authority that the setting on of menstruation did not indicate the complete growth of the girl's physique, and the age of 16 was regarded as the age when that was really achieved. Mann can be shown to hold the opinion by implication, that such development (Mentally at least), was not believed till three years had passed after menses. But the most important question is about Mental and Physical development. Often some psychologists aver that the girls are capable of grasping the meaning of sex at the time of menstruation's commencement. But this view is mainly called from the fact that those tribes that still exist in the savage state of nature seem to regard the onset of menstruation in their girls, as the advent of womanhood in them, and celebrate the event by making them go through ceremonies and rituals at the end of which the girls are thoroughly conversant of their duties and responsibilities as mothers. It is also contended that the age of consent should vary in different countries as the age of adolescence varies. For tropical countries, that age seems to be 14. Bruno Meyer insists on this point and lays down the distinction between "Ripe" and "Unripe" girls. He is of the opinion that every precaution must be adopted to protect the "unripe girls" from sexual experience, whereas in the case of "ripe girls" not coercive but voluntary measures must be adopted to keep the day as distant as possible, for their initiation in the art of Venus.

Much can, however, be done if the stringency of the punishment for breach of such legislation is relaxed. The criticism levelled against the legislation by the orthodox should at least have the use of pointing out the magnitude of the sentences sanctioned under such legislation.....

It is, therefore, necessary that the raising of the Age of Consent by law should be accompanied by proper safeguards. It is equally necessary in the interest of morality and culture that the age of consent should be raised to the maximum limit possible.

The meeting of man and woman in the economy of life has a threefold purpose: The establishment of a domestic partnership, the propagation of the race, and the enjoyment of the pleasure felt in the act of mating. The first purpose organizes the society in family units, and provides for the upkeep and upbringing of the members of the family. The second purpose is in the interest of the society and the race if it is carried out on the lines approved by Eugenics for the propagation of a healthy Race. The third purpose is only the tribute paid to the urge for satisfaction that drives all creatures, whether human or otherwise natural, necessary and inevitable in its drive.

The age of consent legislation is to regulate these three purposes in the best interests of the Society. If the third purpose is so achieved as to hurt the stability of the society or hurt the person or the morals of the parties engaged thereto or hurt the race by perpetuating weaker children, then the state as the avowed Guardian of the individual and the multitude, should and would legislate—by raising the age of consent.

It is really a matter of shame to any nation, with any pretence to culture, that society should be guarded against its lust, by Law. The educated, cultured and moral society, will enable girls to develop in their virgin strength for years, without being sheltered by law.....

The spirit of independence that is abroad to-day, and the great strides that women of to-day are making everywhere, wants that India to fall in line with the world should direct her steps in the proper direction—to see India so advanced is and ought to be the cherished task of all those that strive for social amelioration.

Oral Evidence of Mr. C. A. Buch.

(Karachi, 3rd October, 1928.)

Chairman: What is your social status?

A. I belong to the Gujrati Nagar Brahman community. I know facts about Kachhia, Gujrathia and Kothiawaris. In Karachi they are about one-fourth of the entire population of this town. Their number is 50,000.

Q. Are the customs about early marriage, early consummation and early motherhood the same, or similar in each of these communities?

A. Yes.

Q. Can you tell us what is the marriageable age of girls in these communities?

A. In these communities we have two distinct layers; those that are well-to-do and are more literate and those who yet hold the orthodox view point.

Q. The advanced and the conservatives?

A. Yes. The conservatives even have made a vast improvement on what it used to be 20 years ago. I do not think, girls are married under 10. Some progressive among these marry girls from 13 to 15 and that is the growing majority.

Q. What is the proportion of the progressives to the conservatives?

A. All the younger generation are on the progressive sway.

Q. These layers that you spoke of of well-to-do people and literary minded—have they more education?

A. Yes.

Q. Is the second class, the poorer class?

A. Not necessarily. They are in a minority and even they under economic pressure find it difficult to resort to early marriage.

Q. Is it an economic question?

A. Yes, I think partly.

Q. Will you tell us what is the age of puberty generally amongst girls of this class?

A. In both classes it is 13—15.

Q. Has there been any change in the opinion during the last 5 or 10 years towards advancement?

A. Yes, it has.

Q. Among those first layer of people?

A. Yes, amongst the second layer also.

Q. Do you think this first layer for instance would accept penalising marriage or age of consent or both?

A. I do not think the community whether the first layer or the second layer is in favour of any legislation because they are gradually and very cautiously coming forward to the ideal set forth by the legislation, but when I am speaking on behalf of the community, I am sure, if I were to take referendum they would be against legislation.

Q. They are going on in a sub-conscious manner with the progress of education

A. I think, there has been a certain amount of propaganda and a certain amount of advance that should make the reception of a new law very strengthening to the first layer. In fact, I can give you a very definite reply to that. I had sent out a questionnaire to about 250 members of this community and I got very interesting replies which amount to more than 700 and the replies were printed.

Q. Was it since our questionnaire was issued?

A. Yes. The question was (1) what ought to be the minimum age for girls to marry, and (2) for girls to begin life. The replies were—

Out of nearly 700 replies:—

1 per cent. gave 11 years for marriage.				
3	..	12	..	..
10	..	13	..	..
10	..	14	..	..
4	..	15	..	..
13	..	16	..	..
51	..	18	..	..

I may add that this 51 per cent. who gave 18 years also insisted that that should be the age of consummation.

Q. Would you conclude from it that there is a large proportion of people—over 50 per cent. who are willing to have an advanced marriageable age?

A. Yes, pretty advanced marriageable age. The replies to the age of consent were:—

1 per cent. 13 years.				
9	..	14	..	..
10	..	15	..	..
12	..	16	..	..
1	..	17	..	..
62	..	18	..	..
5	..	20	..	..

Q. Both as regards the age of marriage and the age of consent apparently there is a good majority on the progressive side?

A. Yes.

Q. Are those all progressive who gave their opinion?

A. I received 700 replies and this is a percentage from those replies and as I can see hardly 2 or 3 per cent. are on the orthodox side.

Q. You addressed people indifferently?

A. Yes, absolutely. I addressed my particular caste Kachhi, Kathiawari and United Provinces.

Q. Are these replies about Nagar community?

A. I had my questionnaire published and they sent replies of their own accord.

Q. Anything from the Kachhis or Gujratīs or Kathiawaris?

A. These Nagars are distributed everywhere.

Q. Have you got any percentage from the other people?

A. I have not taken out separate percentage, but they will be lacking a couple of years behind. In Gujerat, the Nagars, Kaisthas, Brahm Kashatrias are on the same level with certain other communities that are going up in education. They are on the same level of intelligence with the advanced Nagars and the rest are mainly devoted to business.

Q. I would like to know the reason for imagining that the community notwithstanding the amount of opinion that you have got would be opposed to legislation. Why should they do?

A. I feel that under the pressure of legislation they are afraid of interference from the custodians of the law and the Gujratis share that shyness along with other communities of India about interference in their domestic concerns from an outside agency.

Q. What is your personal opinion about utility of such a law? Will it strengthen up the other people who are still in favour of marrying their girls late but are constrained by public opinion to do otherwise?

A. Speaking of the community as a whole I would say it has not much utility but much futility. It has made pessimistic even those who personally believe that legislation ought to be made because the legislation that has been made up to now in British India and elsewhere like States of Baroda and Mysore, has not been a great success.

Q. You mean the Age of Consent in British India and the law of marriage outside British India?

A. Yes. It has not been successful anywhere because when it came in the forefront we had already started marrying our girls at the age of 14 and then came the law. As a matter of custom take the Patadars section in Gujerat; they have yet got the practice of early marriage and with regard to the Age of Consent there are not many cases coming up which I am sure do not prove that there have been not many cases which could be taken up.

Q. You mean there are a large number of cases which should come, but are not coming. Can you tell us the reason why it is so? Is the law not known or because there is nobody to bring a complaint?

A. Because the law is not enforced.

Q. How it is not enforced?

A. No complaints are made. In a matter like that it is the girl herself or the relatives of the girl that can lodge a complaint and the traditions of Gujerati families are not such that the mother or the family of the girl could come out and say that such and such a thing has happened.

Q. Do you think the same traditions govern the whole of India?

A. Yes, they do and yet in the case law of India, we do not find any instances where prosecutions have been made by the Age of Consent legislation.

Q. You think the law of the Age of Consent has been ineffective?

A. It has been more a dead letter.

Q. What is your opinion with regard to the law for marriage?

A. Before any legislation is made on the Age of Consent strong and effective legislation should be made on the law of marriage. I think, the law of marriage should be first enacted.

Q. Do you not think it will be more effective?

A. Yes, it will be.

Q. Would not there be want of complaints?

A. It would not be if the penalty attached to the breach of this law of marriage is deterrent and corrective and not vindictive.

Q. What penalty do you propose?

A. Fines.

Q. Are you of opinion that the lesser the penalty in a marital case, the better would be the number of those cases coming to court?

A. Yes, I think so.

Q. Do you think that is why people do not come to court?

A. Yes. For instance, there is my neighbour and I find that he is committing breach of that particular law it is not up to me to wreck his home and get him confined in imprisonment for three years or long. Instead of correcting a small injury he has done to the girl I am ruining her for good.

Q. Therefore you would advocate a fine?

A. Yes.

Q. Even in breach of marriage law?

A. Yes.

Q. How much?

A. That depends on the legislature. The subsistence limit of India being very low, I would put it between 250 to 5,000.

Q. Don't you think that if we keep the penalty of fine only it will be looked upon as one of the important marriage items in the marriages.

A. That is why I have put it at 250.

Q. Would it be deterrent?

A. It would be crushing in some cases.

Q. In that way you are of opinion that fine against breach of that law would be good?

A. Yes.

Q. Would you be satisfied with 14 and 18, if the law is enacted?

A. Personally I would rather raise it to 16 and in the case of boys I would keep it at 18.

Q. How would you reconcile the orthodox view with this age of 16 that you suggest?

A. I make bold to say that the orthodox view is all along mistaken. My study of the Hindu scriptures has convinced me that the age of 16 was recommended by the old Hindu Dharm Charn authors and it was practised for a long time before legislation came about. The proof that I can give is that even now many families marry their girls at the age of 16 and no voice is being raised even by the most orthodox men of that family.

Q. But we are rather concerned with the custom and its binding effect rather than any shlokas in Shastras. What do you think of that?

A. If I am going to legislate in this particular case, I would leave the custom alone; after all we are to do some good to the country.

Q. Are you of opinion that there will be some dissatisfaction and the law will be opposed?

A. It will be more or less journalistic dissatisfaction but no real backbone behind it.

Mrs. Benson: Would you let us know what is the percentage of educated girls among your class?

A. It is very difficult to say but I can say with some confidence because I have been Professor of English and Sanskrit for 5 years in Bombay. In the first year we had 16 and in the 5th year the number went up to 100. Among those 100 there were many Parsis, but the rest were Hindus. Among these Hindus, Gujarati and Daklani girls were 50 per cent. Gujarati girls are coming in great numbers for education in the Presidency Colleges. There are three Mahavidyalas for girls at Ahmedabad, Surat and Bombay. The Mahavidyalas at Bombay is entirely for girls.

Q. What is the number of girls there?

A. In Ahmedabad there are 320 girls, from 4th standard up to matriculation and I think 30 are going in for Degree courses.

Q. How long ago?

A. That was about two years ago.

Q. When the college was started?

A. The college was started three years ago.

Q. That means a very large number of girls are going for higher education?

A. Yes, the majority are of the Gujarati community. In Ahmedabad practically speaking there is no early marriage among girls.

Q. Do you know any cases of early marriage?

A. I have heard from women that have married the girls. I have been receiving letters as editor of this Gujarati paper where ridiculous cases are mentioned of girls marrying at the age of 9, 10 and 11.

Q. In your personal knowledge do you know of any girls?

A. Yes, I know of at least three or four in Karachi.

Q. Are these Hindus or Mohammedans?

A. Hindus.

Q. When did the consummation take place?

A. With regard to these girls of my own community we have a system of marriage and consummation later. They were married at the age of 10 and were not sent to the father-in-law's house till they had attained puberty which was 13 or 14.

Q. Have any of these girls children?

A. Yes, all of them.

Q. Are they all right?

A. I do not think so. They are rickety—both children and mothers. That is on account of rapid progress of maternity and part of it is also due to rather confined habits of life and partly due to city life which is not sanitary. I cannot put my finger and say that these are the causes which can be attributed to early marriages. I have also put a question on that and here are the replies that I got. The question was—Because marital life begins early do you think that is the major reason of physical degeneration of our girls? Replies were—95 per cent. yes and 5 per cent. no.

Q. Have you seen children of these young mothers? Are they normal in growth and intelligence?

A. Yes, they are normal in intelligence but the degeneration has set in physically. They are not physically strong. Some of them are as clever as any other boy but that is all neurasthenic activity. They have no healthy body and the result is that they are clever at one time and then subside into subnormal condition.

Mr. Bhargava: You say that the community of Katchis, Kathiawaris and Gujaratis number 50,000. Does that include banias and lower classes also?

A. Yes.

Q. What is the number of Nagar Brahmins in this community?

A. 400 parents.

Q. Does it not follow that these persons who have sent in replies want a marriage law? You are not in a position to say whether the majority of these people want a law for marriage or consent?

A. So far as my question is concerned, I am not in a position to say.

Q. The reason that you have given for this opinion of yours that this marriage law or consent law has not been effective is because the law came later. Now suppose we have a law which forestalls a great improvement, would you like it?

A. I was not against legislation, I was against legislation with very vindictive punishment. I would favour legislation with sufficient deterrent punishment.

Q. As regards the non-marital cases are you satisfied with the present punishment?

A. About the imprisonment business, I am not satisfied.

Q. Supposing a man commits an offence on a girl of 9, will you not like he should be sentenced to long term of imprisonment?

A. Yes.

Q. So that the present punishment would do for non-marital cases.

A. Yes.

Q. In marital cases, you have said that you would like a fine ranging from Rs. 250 to 5,000, but don't you think that at present, there are certain rulings of the various High Courts that a fine of Rs. 100 is a very substantial fine?

A. Yes, I know that. The practice in different Presidency Courts has been at so much variance that I know of two cases. One was punished with Rs. 500 in Bombay and another by three years' rigorous imprisonment at Karachi. They were almost same sort of cases.

Q. Do you think the discretionary powers given to magistrates and the judges are not sufficient safeguards?

A. I think it is.

Q. Would you like that six months' imprisonment or one year's imprisonment may be provided?

A. Yes, to begin with.

Q. So far as the breach of marriage law is concerned?

A. Yes.

Q. In regard to breach of consent law you would like that substantial term of imprisonment should be awarded in cases of rape?

A. Yes.

Q. Supposing the Age of Consent is 18 years would you like that some sort of distinction be made when the offence is committed on a girl between 16 to 18 and on girls less than 16?

A. Yes, and above that smaller amount of punishment be provided.

Q. Do you not think that the legislature should not care for any sort of dissatisfaction so far as this national question is concerned, i.e., of injury to girls?

A. In the interest of nation it ought to be undertaken even though the majority of the people are against it.

Q. You would fix the period of absolute injury to girls at the age of 14?

A. Yes.

Mr. Mitra: Will you kindly refer me to some of the Shastrie authority where you find that Hindu Shastras do not enjoin child marriages?

A. I will leave all the epoch period behind. I will take Mann. I do not mean there is explicit injunction but there are implied injunction. One is 'A girl even after puberty may live in the home of her parents right up to her death rather than be married to an unfit husband'. Another is whether a girl lives or dies she must be married after puberty. Then the question is that a girl may wait for three years after puberty for her father to find a husband for her after the expiry of which period she may choose a husband on her own accord. After Mann came Parashar. I do not wish to speak about him at all. Parashar is the people's bible now. Then comes Sushrat. He is not a law giver but a better thinker. He has said that a girl should never be married before 16 and a man should never be married under 25. According to our traditions it must be regarded as the verse from the text of Hinduism. There is another verse where it is remarked 'a child born of a girl mother under 16 would not live or will die early'. I would call it theological and medical opinion combined. There is sufficient evidence before us to show that a girl not only did not marry early but was not given away by her parents and waited till she could make a choice. The very word *Kanya* in Sanskrit means she who is free to choose.

Q. Will you give us the verses from Hindu law and shlokas where it is said so?

A. The witness read the verses from Dharm Charan, and said according to this, it appears a huge conference was held at Benares where all the Dharm Charan mantras were repeated and codified into the present form of Mann Smriti.

According to Shastras of the Hindu child marriages are not enjoined in any way and if there is any notion in such men it means that it was only custom for the time being.

Q. According to Shastras any custom if it happens to be contrary to the Shastras should be changed.

A. Yes.

Q. Is there any notion among the people here that soon after marriage consummation should also take place?

A. No. The custom is that if a girl is married early she is not sent to the husband unless she is very well grown up. Otherwise she remains for two years in her father's house.

Q. That is Gonna or Muklawa?

A. Yes, we call it Annu.

Q. Are you in a position to speak of other communities generally?

A. There are so many communities. This custom is prevalent in other communities like the Bhatias and Lohanas. The girl is sent to her husband when she is a grown up woman.

Q. Do you think that the legislation should be taken up more for the marriages than for consummation?

A. Yes.

Q. Is it because you think that once the marriage is performed it is difficult to prevent consummation?

A. Yes, I have got serious misgivings about that. The first is the difficulty of evidence when consummation has taken place. In 99 cases out of 100 it will be very difficult for the prosecution to adduce evidence. In that case the most important evidence will be that of the girl herself but the traditions of Hindu girl will preclude her from coming out and giving this evidence. That is one misgiving. Secondly even if the girl turns a true witness or a hostile witness as the case may be there may be feud between the parties. It will be only medical evidence on which you will have to rely. I refer to Taylor's Jurisprudence which is very explicit on this point. Dr. Taylor has almost convincingly proved that to adduce evidence in cases of consummation or cases of rape is very difficult even for experts. He has given examples which I have quoted in my written reply. He says a girl was examined medically and the doctor's opinion was that she was molested. After six weeks another examination was held and the doctor gave his opinion that he was still of the same opinion. Then the girl came out and said that the whole case was got up and that she was never molested and she was virgin intact. As a layman, I have simply to believe what eminent men say that it is rather difficult to adduce evidence especially when it is a question of vergo intacta. Vergo intacta ought to be proof conclusive but sometimes it is not because this rupture can occur in various circumstances. That is the second difficulty. The third is that these families become hostile as unfortunately sometimes it is the case. Father-in-law's family and the parent's family would conspire and make evidence. So any man who wants to take revenge and wants to wreck the domestic peace of the family will go and report to the authority that breach of a particular law has been committed and there will be unnecessary police interference. Advance the marriage age as high as you can but after that leave them alone. Do not have separate legislation for the Age of Consent in intra-marital relations.

Q. So long as it is not possible to enact a law for the age of marriage do not you think that some sort of law for the Age of Consent is necessary?

A. I think, this Committee is trying to put the cart before the horse.

Q. Do you suggest that there should be some difference in procedure of trials in these marital and extra-marital cases, such as camera trials where the demerits of open trials may be minimised?

A. Yes. There should be such concession as has been made in the case of Parsis in this Presidency. The Parsis have all their extra-marital and intra-marital cases tried by a bench of their own which is presided over by a judge of the High Court nominated by the Government of Bombay. The local authority is there, the barristers are there and the whole procedure is observed but the cases are tried in camera. Such a view is gaining ground. Even in England Divorce Courts are of opinion that it would be safer to have in camera proceedings.

Q. Would you also prefer some sort of preliminary investigation to be taken up by a magistrate before the regular case is put up?

A. I would suggest, if it is possible, but it is not possible. First of all all the communities may be organised and each community may be called upon by Government to have some trustees and a Bench. Let that Bench be presided over by a magistrate. If I have got a case in Kaistha community I would take over 3 Kaisthas, who are approved by Government and belong to the upper section of the people. They will sit with the magistrate for the preliminary investigation.

Q. In fact, you suggest that there should be some preliminary investigation before a regular case comes up for the court?

A. Yes.

Mr. Baranagorn Mudhigari: Have you said that in cases of marriage legislation the penalty for breaking the law may be fine?

A. Yes.

Q. Supposing the fine is not paid?

A. Then you can send him to jail.

Q. So far as the age in marriage legislation is concerned you agree that there ought to be a consent legislation within the marital relations?

A. Yes.

Q. As regards vindictiveness between the two families which may result in false cases being foisted on the uneducated husbands have there been any such cases under the present law?

A. I have mentioned that the present law has not been effective.

Q. Have such cases come to light in this province?

A. No.

Q. As regards this difficulty of 'vergo intacta' in cases of rape of girls, there is no question of husband and wife. Such a position does not arise in marital cases?

A. So far as strangers are concerned, in case of rape, or husband in case of intra-marital consummation, the medical evidence has to go on the same lines.

Q. There would be a very vital difference. In the case of rape it is possible that a false case may be foisted on a stranger and artificial menstruation may be brought about. Such a position would not naturally arise where the case is against a husband?

A. No, it is not very likely.

Q. Even if the marriage legislation is passed a supplementary legislation with regard to the Age of Consent may be necessary and may be passed, would it not serve some purpose?

A. Yes, it must. After all if legislation is undertaken chances are that a large number of people would respect that legislation in course of time if they are educated about the law. There I may strike a note of warning. India is a law-abiding country in spite what some people may tell us but when any law would come in conflict with old traditions of the masses the chances are that it will be broken and greater credit will be taken in its breach than in its observance.

Q. Have you any experience of such breakage? Can you give us any instances?

A. We have not got any such law, so such a position has not so far arisen but the mentality of the people is such that they might even refuse to observe the law if it is made.

Q. As regards the right to complaint in marital cases we want to take all possible precautions against improper prosecutions and against collusions. What would you suggest as a safeguard?

A. I would suggest the framing of this law on the lines of the Tort law where a person on whose servant injury is proved may be the prosecutor. But even under the English law the wife is the servant of the husband and the father from whose service the girl has seceded cannot be the complainant. For the purpose of this law, however, we may make modifications and say that the father continues, for the purpose of this law, master of the girl.

Q. And the husband should be supposed to have committed the offence against the father, if he cohabits with the girl below a certain age and therefore the father will be the complainant?

A. The father, or brother.

Q. Would you go beyond the father or brother?

A. Any natural guardian, which in a joint Hindu family leaves you a wide circle. Even the uncle or aunt can come forward with a complaint. As a matter of fact even the Gurm or Priest is a natural guardian.

Q. Would you then give the right of complaint to anybody interested in the girl?

A. Yes, I would.

Q. Interested whether by relationship or otherwise?

A. Then we might bring in an entirely third party. I would include the family priest also.

Q. But would he come forward with a complaint?

A. Yes.

Q. Do you realise that in many cases he has been a contributory cause for these things?

A. Unfortunately yes.

Q. You suggest that a sort of court like the Parsi Matrimonial Court should be established for the purpose of trying cases under this Act. Do you think that these matrimonial courts should be under the control of a stipendiary magistrate?

A. Yes.

Q. And should the case be tried *in camera*?

A. Yes.

Q. Do you think that in that case more cases will come to light?

Mr. Kadri: You said something about the appointment of the Committee being like putting the cart before the horse. What exactly did you mean by what you said?

A. I did not say that of the Committee. The Committee was appointed by the Government when the marriage bill was before the Assembly. I said that Government should have appointed a Committee for ascertaining public opinion on both the questions.

Q. Now coming to the Age of Consent, as far as ultra-marital relations are concerned, would you not have some safeguards?

A. No.

Q. Nor would you restrict the age to 16?

A. No. I would have it at 18. For that matter my ideal would be to compete with the United States of America and make it 21.

Q. Would you retain imprisonment as a punishment?

A. Yes.

Q. In the case of offences by the husband would you have for punishment fine only or imprisonment as well when the girl is below a certain age?

A. Under 14 I would punish the offender in the second degree or third degree. If a girl is between 14 and 16 and when it is very difficult for ordinary men to restrain themselves you might take the extenuating circumstances into consideration while administering the sentence.

Q. We have been told that so far as orthodox Hindu and Mohammadan opinion is concerned, they would rather have a consent legislation than a marriage legislation. Is that so?

A. Unfortunately, I have lost touch with orthodox opinion. I, however, think that even orthodox people will give up and are giving up this evil practice. They come splendidly into line with others when they find that there is a law to punish them.

Q. Would you give matrimonial courts authority to try these cases or only make a preliminary enquiry?

A. In the Parsi Matrimonial Courts they decide them.

Q. But there are divorce cases also. Offences which we have to deal with are less serious in character. Would you therefore give the courts full authority to try these cases or only to make a preliminary enquiry?

A. If the punishment is limited they might decide the cases. If the new law is about fines only and if the Court comes to the conclusion that the offence has not been serious the man may be let off with a fine. Otherwise they may commit him to the sessions.

Q. What recommendations would you make as regards punishment? Would you have fine only or fine and imprisonment?

A. It will depend upon the seriousness of the offence. I don't want to commit myself at present to any particular suggestion. What I would however suggest is that if these cases are brought within the clutches of the law, the punishment should be entirely deterrent and preventive whether it is fine or imprisonment.

Q. At present it is fine or imprisonment or both, and below 12 the punishment is more severe. What is your recommendation?

A. My recommendation would be entirely fines, because as I have already said in trying to redress one grievance we would be creating another mischief by separating the wife from the husband and she will be a victim in her father-in-law's house.

Q. I might point out that there may be cases where serious injury might have been caused by a grown-up husband—say the girl is 14 and the husband is 35—would it not be desirable in such a case to give authority to the trying court to give the offender such punishment not exceeding the maximum as they may think proper?

A. In a similar case here the offender was given three months' imprisonment. One should take a wide view of such cases.

Mr. Kanhaiya Lal: Suppose we accept your recommendation to provide matrimonial courts for the trial of these cases. In that case at least there will be two non-officials to sit with the Magistrate and it is hardly likely that these will go wrong. Is that not so?

A. But if Hindu society had a son-in-law in jail and a divorce law also, the girl's life would be far more worse. As it is you are penalising not the man but the girl.

Q. Even if injury has been caused and leads to the death of the girl would you be prepared to give a light punishment?

A. I would call the offence culpable homicide and sentence the man to death. For my purpose it does not matter how the injury has been caused.

Q. We are told that there are Panchayats existing in various parts of Sind? Would you like to give power to these Panchayats to watch and report breaches of the law?

A. I do not know anything about Sind, but only about Karachi city. Therefore I cannot say about these Panchayats.

Q. Would you recommend a system of registration of marriages?

A. Yes. I would for purposes of record.

Q. On whom should the obligation be placed for reporting these marriages?

A. I would place it on the man who has customarily to be present on the occasion, that is, the priest.

Q. Would you place the obligation on the parents or guardians?

A. The case is identical with the registration of births. When there is a case of maternity conducted by a doctor it is the doctor who reports the case to the municipality. If in such cases you punish the doctor in case of omissions to report, he will surely report. So also if you make it obligatory on the priest and impose a penalty for omissions he will do it.

Q. In addition would you not make it obligatory on the parents or guardians of the parties to the marriage so that no possible loophole may exist?

A. You might take the signatures of the three, namely, the priest, the father or guardian of the girl and the father or guardian of the boy, on the report.

Q. Would you tell us who should be the registering authority?

A. In towns, municipalities. In rural areas, the revenue authorities like the Tapadar.

Q. In rural areas cannot the Taluk Boards and Local Boards be entrusted with this work?

A. Even now they take most of the work from the Tapadar. The present system is satisfactory.

Q. Would you like that when a registration is made, a certificate giving the necessary particulars about names and ages of the parties should be issued to the reporting individual?

A. Yes. But there is one difficulty. At present registration of births is not carried on except in big cities. Once when giving evidence before the Taxation Enquiry Committee, I suggested that births should be registered and I was advocating some kind of taxation. But Sir Charles Todhunter and his colleagues on the Committee said that it was impossible to register births in India. I told them it ought to be done. But they said that the expenses to be incurred would be so great that they were not prepared to recommend it.

Q. Will it be prohibitive?

A. They said it will be prohibitive. My point was that it will not be.

Q. Then would you have marriage registration conducted on the same lines as the registration of births?

A. Yes.

Oral Evidence of Dr. (Miss) NEWNES, Medical Practitioner, Karachi.

(Karachi, 3rd October 1928.)

Dr. Beadon: How long have you been here?

A. I have been practising here for the last 14 years.

Q. Have you any experience of any other parts of India?

A. Not as regards practice; I have practised only in Karachi.

Q. Where did you qualify?

A. I qualified in Singapore.

Q. Is your work entirely in the city or outside also?

A. I do not often go to the villages. But my experience extends to all classes of people and mostly to Hindus and Mohammadans.

Q. Do you have a large number of confinement cases?

A. I get about 17 or 18 a month or about 180 to 200 a year.

Q. In your experience do you find that the marriage age is going up or is it just the same as it was?

A. Among the educated classes it is going up. Among the ignorant classes and the merchant classes it is just the same. Among the Katchi people it is very early.

Q. When you say early marriage what age do you mean?

A. 11 or 12.

Q. Among the 200 cases which you generally get in a year can you say in how many cases the mother is below 15?

A. I have not got a record of these cases; but I think it should be quite a number. Mostly I find that the first babies are at 13 or 14. The average is 14. It is amongst the Katchis mostly.

Q. In those cases was there any difficulty in a child-birth?

A. Yes.

Q. Was there long labour?

A. Generally there is long labour; but small babies come off easily.

Q. Are these babies comparatively speaking small in size?

A. A good many of them are.

Q. Among early mothers do you find that the children show any difference in development or do you find that they are just the same as the children of later mothers?

A. The babies of early mothers are generally weaker. And they get all sorts of diseases easily.

Q. Do a greater number of first-born children of early mothers die?

A. Yes, they do.

Q. Amongst those which grow up have you noticed any mental deficiency?

A. I have not followed them to that extent. But I think so far I have not come across cases of children who are mentally deficient because they are the children of early mothers.

Q. Have you met any cases in your practice in which there has been grave injury?

A. Recently I had the case of a girl of 14. There was severe injury and the vagina was lacerated.

Q. Is that an exceptional case or is it common?

A. I have not had many cases like that.

Q. Was it a marital case?

A. Yes; it was.

Q. Have you had many cases like that?

A. No; such cases are very rare. I have had two or three. In all these cases the vagina was lacerated. Such cases arrest the development of the girls. Even when they are 17 or 18, they look girls of 11 or 12.

Q. Do you find osteomalacia here?

A. It is fairly common in the Tatta community.

Q. Do you find it more common in women who are married early than in women who are married later?

A. They do not have it generally with the first child. It is only after the second and the third child they get osteomalacia. It is mostly amongst people who are married early.

Q. Is that common among women who have had second or third child under 16 or among those who have had them between 16 and 18?

A. It is common amongst women who have children under 16.

Q. How many cases of osteomalacia do you come across in a year?

A. 20 or 30 cases. But these are not bad cases.

Q. Do you find that such women are in any way mentally affected? Do they suffer from melancholia for instance?

A. Quite a number of them suffer from hysteria.

Q. If women get children at a very early age do you find quite a number of them sterile after the first child-birth?

A. A few of them are. Speaking of osteomalacia I might mention that it is mostly common among the Tatta classes because they do not have sufficient ventilation in their houses. It is due to want of sunshine and the girls being confined to the house mostly. That causes osteomalacia is common among the Katchis also.

Q. Are they backward in education?

A. Yes; they marry their girls very early.

Q. Do they have consummation immediately after marriage?

A. I have had cases where there was consummation before puberty. I had quite a number of such cases.

Q. Is it very common?

A. It is not very common but such cases do occur.

Q. What is the number of such cases during the past 12 months?

A. I cannot remember.

Chairman: How long after puberty will girls be physically developed to justify consummation?

A. At the age of 16, I should think.

Q. Do you think that there is some amount of danger in consummation between 15 and 16.

A. Yes. 17 or 18 would be quite safe.

Q. What would be the age you would fix for intelligent consent by a girl with due realisation of consequences?

A. 18.

Q. What are the evil effects of child marriage? Can you say that a certain evil is directly linked up with child marriage?

A. I can say that. One is the arrest of development. Another is that mental condition is affected.

Q. Does it sap vitality?

A. Yes; between 12 and 13 it certainly does.

Q. Do you consider that early consummation below 13 is the direct cause or a potent cause of infant mortality?

A. Yes.

Q. Is that your experience?

A. Yes; generally these women lose their first babies. But it may be due to ignorance of handling or other causes.

Q. Would you be able to say that this is a major cause or potent cause?

A. I am not able to say that. In one case; I noticed the mother was 13 and the child was very weak. The child eventually died at the age of 4 of diphtheria.

Q. Can you say that infant mortality is directly connected with this question of early consummation and it is one of the major or potent causes?

A. I cannot say that. There are a variety of causes for infant mortality.

Mrs. Brijlal Nchru: If medical men and women are asked to report cases of motherhood below 13 do you think they will generally agree to that?

A. Yes; we can do that. Personally I have no objection.

Q. You do not think it will interfere with their practice and popularity?

A. No; I do not think.

Mr. Bhargava: You referred to a girl of 14 and said she nearly died of hemorrhage. Was the girl specially undeveloped?

A. Yes; she was.

Q. If the girl is 17 years at the time she gives birth to the first child, do you think it is objectionable?

A. I think 18 will be better.

Q. Is 17 injurious or not?

A. No; it is not.

Mr. A. Ramaswami Mudaliyar: You mentioned some cases of cohabitation before puberty. Were they cases of injury? How did the cases come out?

A. In one case the parents brought the girl to me for medical treatment, because the girl was complaining of pain.

Q. What were the ages of the girls about?

A. One was 12 and another was not even developed.

Q. How were you able to ascertain that menstruation did not occur in that case?

A. There was no development. Also the parents told me that the girl had not menstruated.

Q. To what community did the girls belong?

A. One was a Sindhi and another was a Mohammadan.

Mr. Kanhaiya Lal: You say that you get 150 to 200 confinement cases a year. Can you tell us roughly how many of these cases occur amongst girls of 13 or under?

A. About 3 or 4.

Q. Can you tell us how many between 13 and 16.

A. Between 13 and 15 the number is not large, but between 15 and 16 it is a good many.

Q. What age would you recommend for consummation in marital cases?

A. 16 to 18.

Mrs. Bijlal Nehru: Have you generally found that the ages which the parents of the girls gave, tallied with your estimate, or did you find a glaring disparity between the apparent age and the said age?

A. Most of them tallied with my estimate and they were reliable.

Written Statement, dated the 6th August 1928, of Dr. (Miss) D. BOLTON, W.M.S., Lady Doctor in charge, Zenana Hospital, Dera Ismail Khan.

11. Yes.

Girl of 11—first coitus resulted in rupture of vagina—into peritoneal cavity peritonitis—death.

12. Most certainly.

16. Margin of error would be reduced.

Oral Evidence of Dr. (Miss) BOLTON, Karachi.

(Karachi, 3rd October 1928.)

Mrs. O'Brien Beadon: Have you been in other parts of India also?

A. I only just came to Karachi. I was in the North-West Frontier Province for 5 years and before that I was in Bettiah in the Province of Bihar for 2 years.

Q. In regard to the marriage age is there any great difference between Bihar and the North-West Frontier Province?

A. I do not think there is much difference. Of course in the North-West Frontier Province the marriage age is quite high. As far as I remember in Bihar, I had one case of a mother at 13 and I had to take out the child

by means of forceps. I had also a case of a girl of 13 in the North-West Frontier Province. All the others were 16 and above.

Q. Does that mean that the women do not become pregnant until later?

A. That may be so.

Q. Do you know anything about the age of marriage? Is it generally high or low?

A. I know that early marriage is not usual in the North-West Frontier Province. I do not know about Bihar.

Q. Were you working entirely in a hospital or had you private practice also?

A. I had not much private work. The cases were brought to the hospital.

Q. How many maternity cases do you generally get in a year?

A. About 180. As far as I remember one or two girls were under 13.

Q. In cases in which early motherhood takes place, how do the girls stand labour?

A. In most cases it is not particularly noticeably bad.

Q. Have you met any cases of injury from the first coitus?

A. Yes.

Q. Have you had cases of hæmorrhage?

A. No; but I have seen a case of ruptured perineum. But it came to me for sterility later. The girl was 12. I thought she came to me after delivery.

Q. We have been told that these women who have early consummation are generally sterile. Do you think that the complaint is right?

A. Quite a number. Of course we have not had very many early child-births, but I have seen quite a number becoming sterile after the first child.

Q. Is sterility connected with septic poisoning or due to gonorrhœa?

A. I think so. Septic poisoning.

Q. Is that common in the North-West Frontier Province?

A. We had no cases of gonorrhœa, but we had cases of infected tubes.

Q. Had you any cases in Bihar?

A. I do not think we had. We had a great many gynecological cases in the North-West Frontier Province. About one-third of the total number of cases were gynecological.

Q. When I was in Simla, I was told by some of the doctors there that there was a great deal of infective granuloma prevalent. Did you find that in Peshawar?

A. No.

Q. If there is a great deal of gynecological work, what is it due to?

A. We have a great deal of sterility and a great deal of tubercular infection. Tuberculosis is increasing rapidly.

Q. Amongst what communities is this?

A. Both amongst Hindus and Mohammadans.

Q. Is it mostly amongst early married girls?

A. It is amongst all people generally.

Q. In your remembrance do you think there was more of tuberculosis between the ages of 15 and 20?

A. Yes. I think so.

Q. Between 20 and 30?

A. It is difficult to say. I can only say it is increasing very rapidly.

Q. Is osteomalacia common in the North-West Frontier Province?

A. It is hardly common. In 10 years we had only one case in the hospital. If there had been cases like that they were bound to come to us.

Q. Is it the same in Bihar?

A. I was there for two years but we had no cesarean section there.

Chairman : Apart from Bihar and North-West Frontier Province have you had to deal with child mothers below 14?

A. I worked in Gwalior for 4 years and there used to be some young mothers there.

Q. Do you think you had some 20 or 30 cases?

A. Yes; I came across most of the child mothers there.

Q. Did you notice any evil results due to early motherhood at the age of 13 or 14?

A. With regard to children I find that children of young mothers are generally small and weak.

Q. How does it affect the mother?

A. It must spoil her development because she is not developed. That is inevitable.

Q. Do you think that early maternity is a fertile source of general debility or loss of vitality so as to be a hotbed of disease?

A. Yes. The girls are infected, and the vitality and the power of resistance is lowered.

Q. What age would you put as the age for safe motherhood in India?

A. I will put it somewhere after 16.

Q. Do you think there is more danger before 13 and between 13 and 16 than after 16?

A. I think if a girl has a baby before 16 she is not fit to have it. Possibly each year makes a difference, I am sure before 16 it will tell.

Q. Do you think that infant mortality is due to consummation before 13 or 14?

A. Yes, when the mother's constitution is affected, surely the child's constitution must be obviously delicate.

Q. I understand that there are a variety of causes for infant mortality. Would you put this as the main or chief cause or as the potent cause?

A. It is quite an important cause.

Q. With reference to question 10 of the questionnaire at what age would a girl in India be competent to give an intelligent consent to cohabitation with due realisation of the consequences?

A. It should be not less than 16.

Q. Have you got any other experience beyond Gwalior about girl mothers?

A. No; I worked only in two places.

Mrs. Brijlal Nehru : When you say that you came across girl mothers in Gwalior, what were their ages?

A. Between 14 and 16.

Q. In the majority of cases were they of that age?

A. Yes, quite a number of them.

Q. Can you give us an idea what percentage it would be?

A. We had something over 200 cases a year. It is larger than any I met anywhere else.

Mr. Bhargava : Is gonorrhœa a disease specially linked with child marriage?

A. No.

Q. So far as tuberculosis is concerned, I take it that it is not confined to any particular class, but that it is increasing in the case of the general population consisting of all classes.

A. Yes.

Mr. S. C. Mitra: What is the usual age of menstruation of Indian girls?

A. Between 12 and 13.

Q. Do you find that it is the same in the North-West Frontier Province, Bihar and Gwalior?

A. Yes.

Q. Do you think that after menstruation courses begin two or three years should elapse for consummation to take place?

A. Yes.

Mr. Ramaswami Mudaliyar: You referred to the hospital in Bihar. Is that hospital used by all classes of people, or do only particular classes of people come to the hospital?

A. Patients from the surrounding country come to the hospital.

Q. There are some hospitals where high class people will not go for delivery, but they would have them attended to in their own homes. Have you any reason to believe that it was so in the case of the hospital you mention?

A. I do believe we had better class people also. But most of the cases were poor class people. The accommodation in the hospital was very limited.

Q. Do you think the age of maternity is the same in both the sections, that is, the high class people and the low class people?

A. Yes.

Q. What is the increase of tuberculosis due to?

A. Possibly due to economic causes. In Dera Ismail Khan there is a great deal of tuberculosis. The sanitation there is very bad. People there are poor also.

Q. Do you find that if a child mother gives birth to a child at 14 and later on when she is advanced in age she gives birth to more children are the latter also weak or do they improve in physique?

A. No doubt they improve. But even they are affected by the mother.

Mr. Kanhaiya Lal: You said that girls were not fit for motherhood before 16. What age would you recommend for consummation?

A. 16.

Q. There has been a complaint that cases of infringement of the law are not brought to light. Would the medical profession help in reporting these cases?

A. That is difficult.

Q. Suppose there is a case of poisoning, they have to make a report. Similarly if the law requires that they should report cases of infringement of the Age of Consent law, would they do so?

A. It would affect their practice, but they would do it all the same.

Q. If such cases are brought to the hospital, would the lady in charge make a report?

A. If the law requires it she will do so. Otherwise it would be difficult and it would prejudice the hospital.

Oral Evidence of MIR AYUB KHAN, Bar-at-Law, Karachi.

(Karachi, 8th. October, 1928.)

Chairman: How long have you been at the Bar?

A. I came out in 1908.

Q. Do you belong to any particular community amongst the Moham-madans?

A. I am a Baluch.

Q. Is the Baluch community very large here in Karachi?

A. They are in the Lari quarter of the town. Their population in Karachi is about 50,000 or so. They mostly belong to the working classes.

Q. Do their marriage customs differ from those of other Mohammadans?

A. Not much, excepting the Makrani class.

Q. What is the marriageable age amongst the Makranis?

A. Ordinarily the marriageable age is not below 14. They practically sell away their girls for a good price. The proper word they use for this custom is 'Lab', which is a kind of dowry which the father of the girl takes.

Q. Does the man who buys take charge of the girl?

A. Yes, entirely.

Q. What is generally the age of the girl?

A. Between 12 and 14. It is generally above 12.

Q. What, do you think, is the price of the girl generally paid?

A. It all depends upon the man to whom she is sold. If he is a big zamindar he will pay a good round sum.

Q. Do you think it will be so much as 500 rupees.

A. More than that sometimes.

Q. Amongst the Mohammadan population what is the general marriageable age?

A. Not under 14.

Q. Do you think that is about the age of puberty also?

A. Yes. It is after puberty that they are generally married.

Q. Are there many cases of guardians, such as fathers or grandfathers, marrying their girls below the age of puberty?

A. As I have said, excepting the Makrani class you will find only stray cases of early marriage. As a rule they are not married before puberty.

Q. We are told that there is a class of fathers who for exigencies want to marry their daughters early. For instance, the old man may have lost his wife.

A. Under those circumstances the girl may be married early. But that is exceptional.

Q. May it be laid down then that as a general rule girls are not married below 14?

A. Yes.

Q. That being the case any law penalising marriages of girls below 14 would not be met with any opposition from the so-called orthodox Mullas. Is it not?

A. I don't think the Muslims ought to object to it. Even under the laws of Koran the father is only called upon to arrange for the marriage of the girl when she has reached age of puberty and not before that.

Q. That being so you don't think there should be any objection to marriages being penalised below 14?

A. I think it should be a very welcome reform.

Q. As marriages take place generally late, I don't suppose you are likely to know cases of child mothers suffering.

A. We find in some of the Hindus from Kutch that girls suffer on that account. The life of the girl is ruined. In Karachi you find many such cases where the girl suffers as a child mother. But that is mostly outside the Mohammadan community.

Q. Do you know of any case among Mohammadans?

A. No. Where the girls have been given in marriage at a very tender age those marriages have always proved very unhappy.

Dr. Bradon: In the case of these Makranis, who buys the girls?

A. Some of these Zamindars in Sind.

Q. Is it probable that consummation takes place immediately, or is there some interval?

A. The girl is sold generally at the age of 12. I don't suppose they will wait.

Q. Have you met any cases of early motherhood among these women?

A. I don't know about motherhood.

Q. Do you think that deterioration of the race has anything to do with child motherhood?

A. I think so. The Baluchies are a very strong and well-built people. Their girls are never married before 14. Those who are married at a very young age have generally very weak children.

Q. What about their food? Is it different? Are they better off?

A. They are the most hard-working people in India. They live an open air life. Their food is generally rice. They use flour also.

Q. What about water? Is it very easy to get?

A. Not so easy. They are healthy because they live in the open air and no marriage takes place before 14.

Mrs. Nehru: Does this sale of girls take place amongst their own class?

A. In their own class also. They are generally sold to Mohammadan Zamindars in Sind.

Q. If the age is raised to 16 would there be any objection from the religious point of view by the Mohanmadans.

A. Not, in my opinion, unless some very orthodox Mullas raise unnecessary objections which they are in the habit of. Generally no one will take objection.

Q. There may be some difference between the age of puberty and the age of 16. Even then you don't think there will be any objection.

A. I don't think there will be any objection.

Q. What is the state of education of women in your community?

A. Practically nil. Even among males there is no education at all. I am the first man perhaps in my community who has been to England.

Q. What about purda?

A. In Baluchistan the purda is not as strict as it is here. Women don't observe purda even from Maharans and non-Maharans. Slavery still exists in Baluchistan.

Q. What is the extent of infant mortality in your community? Do many children die?

A. They die of small-pox generally because they are not used to these modern ways of getting vaccinated. Their sanitary conditions are also not very satisfactory.

Q. Have you any idea how much would it be?

A. I am afraid, I cannot give that information.

Mr. Bhargava: Do you think there is a large number of Makranis in Karachi?

A. Majority of the people who belong to the labouring classes are Makranis.

Q. What is the population?

A. From 40 to 50 thousand.

Q. Have you got some experience of the rural population of Sind also?

A. Very little.

Q. Can you say what is the general level of intelligence and education? Can they count 20?

A. They can of course count 20, but they are generally very backward in education.

Q. I mean, supposing a law on the lines of Sarda's Bill is passed would there be any difficulty for them to know their ages?

A. There will be no difficulty in finding out the age if such a law is passed.

Q. You have said that according to the Koranic injunction a father can only dispose of his girl after puberty.

A. I said that when a girl has reached the age of puberty it is incumbent on the parents of the girl to marry her, otherwise the option of puberty will come in.

Mr. Mitro: You think that there will not be much opposition if the age for marriage is fixed.

A. No.

Q. You also think that when a girl reaches the age of 14 she must wait for two more years for marriage, i.e., you would prefer to fix an age for marriage also and that you want to fix at 16.

A. Yes.

Q. Will you fix the same age for the girl to give her consent to cohabitation.

A. Yes.

Q. And for extra-marital cases what age would you fix?

A. 18.

Q. You were speaking of the sale of girls. Are those girls sold for marriage or for immoral purposes also?

A. Always for marriage. They call it dowry, but practically it is selling.

Q. You think there is no injunction in the Koran that a girl should be married at a particular age.

A. It is only laid down that when a girl has reached the age of puberty it is the duty of the parents to see that she is married.

Q. You are not afraid of any serious objection on that account.

A. No.

Mr. Kodri: Are the customs in your community the same as in other communities?

A. Exactly the same. In our community also it is the parents who arrange for the marriage.

Q. You said there is a Koranic injunction that it is the duty of the parents to marry a girl on the attainment of puberty. Can you give me a reference to that?

A. If you like, I can find out and send it to you.

Q. As regards punishment in marital cases would you recommend any alteration in the present law?

A. In extra-marital cases the punishment is quite enough. As regards marital cases the punishment now provided for should be up to the age of 14, i.e., the offence will be cognizable up to 14 and the punishment will be 2 years' imprisonment.

Q. In the matter of procedure would you recommend any alteration? At present the complaint can lie before a District Magistrate and investigation can be made by an officer not below the rank of Inspector of Police.

A. I think a First Class Magistrate would meet the requirements of the case better. It is hard upon a man in rural areas who has to go before a District Magistrate who may be at his headquarters or if it is the touring season he may be touring about.

Q. It has been suggested that we might have something like a matrimonial court where the judge or the magistrate may be assisted by two assessors of the community and that the trial may be held *in camera*. There would be less scandal created in that way. What is your opinion?

A. I think in such a case the greater the scandal the better. It would be an eye-opener to others. A special tribunal there may be but I am not in favour of having the trial *in camera*.

Q. Would you make the offence compoundable with the permission of the court?

A. I would make it compoundable. I think the greatest sinners are the parents. It is they who arrange the whole show.

Mr. Kanhaiya Lal: You have said that the age might be fixed at 16 in marital cases. Would that be generally acceptable to the people in Sind?

A. It ought to be.

Q. Would it be acceptable to the Baluch community?

A. They would have no objection.

Q. I understand you belong to the family of the Chief of Las Bela. Is that State governed by British laws?

A. We have got our own laws. It is the old feudal system of government.

Q. If we fix the age at 16, is there any chance of the people trying to evade the law by going there and settling here?

A. I don't think they will go to a country which cannot give food to its own people.

Q. Have you got village panchayats generally in Sind?

A. Not among Mohamadans. We have what are called Jirgahs. A panchayat is for a village while a Jirgah is for the whole tribe. In Sind panchayats are confined to Hindus as a rule, and Mohamadans are not members of those panchayats.

Q. Can you suggest any way of making the law of age of consent effective, that is for bringing the cases to light?

A. Registration of births would be the first thing and also I would very much favour the registration of marriages, because, in many cases it is very difficult to prove a marriage. The age may also be recorded.

Q. It is feared that people might make false entries in order to expedite consummation.

A. In the beginning there would be difficulties. But these will gradually vanish.

Q. Would the cases be numerous?

A. In the beginning there would be. Registration of births and marriages will however help in the detection of crime.

Q. Would you like to have any village panchayats or village organizations to help in the detection of crime or watch these cases?

A. They would be helpful to a certain extent. There should be some official agency.

Q. Are you in favour of keeping the offence cognizable up to 14 and beyond that non-cognizable?

A. Yes.

Written Statement, dated the 11th August 1928, of Diwan LALCHAND
NAVALRAI, M.L.A., Larkana, Sind.

1. There is no dissatisfaction with the law as contained in sections 375 and 376 as to the age of consent having been raised to 13 years in the case of marital state and 14 in other cases, but the educated and sufficiently intelligent are in favour of making an advance on the present law.

2. In my opinion advance should be made in the present law as the girls attain puberty just when they are 13 and the exercise of marital connection just at puberty is injurious.
3. The crimes of seduction or rape are not frequent in our part of the country but they do occur of and on. The amendment is likely to be effective as a check.
4. There is a considerable volume of public opinion against early marriages and marriages are being postponed beyond 13 years.
5. Girls attain puberty at about 13 years of age. It differs slightly in different communities and classes depending upon their mode of living, working and climate.
6. It could not be said to be common but there are cases of cohabitation soon after puberty and off and on even before puberty. A case of rape of a girl before 13 did arise recently in the Sessions Court, Karachi.
7. There are no religious injunctions requiring the practice of early consummation of marriage in our part of the country.
8. No Garbhadan ceremony is performed in our part of the country.
9. Mere attainment of puberty is not sufficient physical maturity to justify consummation of marriage. In my opinion it sufficiently develops in a girl at the age of 16 years.
10. A girl may give an intelligent consent as required in the question after 16 years of age.
11. I do not remember any particular case but such cases do happen and it is a common knowledge.
12. I do certainly consider early consummation and early maturity responsible for high mortality affecting the intellectual and physical progress of the people.
13. There has been public opinion in the educated and intelligent class of people with respect to the extent of age of consent but with respect to marital cases it is considered necessary to fix the minimum age of marriage before the age of consent is raised as in cases of married girls of over 13 years of age temptations of cohabitation would be more when they are in possession of their husbands and cases of rape may increase such as not to be effectively prevented by the penalty under the age of consent law. Fixing of minimum age of marriage with a penalty would be more desirable and efficacious.
14. Not the women of the educated and intelligent families. Women in general also do not favour consummation of marriage before puberty.
15. Difficulties do arise. Keeping of horoscopes and correct and regular registers of births may minimise the difficulties.
16. By raising the age of consent to 14 or above probability of the correctness of the medical evidence may increase on account of general development and of the breast.
17. Yes. I would suggest imprisonment of either description for 2 years or fine or both if the sexual intercourse is by a man with his wife under 13 years of age and one year of the same description or fine or both if the wife is above 13 years but under 14. My reason for suggesting lesser punishment in either case is that when the wife is in the possession of the husband after puberty the association and opportunity would require more of resistance in which a man may fail in spite of himself.
- 18 and 19. Beyond the existing safeguards and different procedure I would suggest that the investigation provided for by Section 561, Criminal Procedure Code, should be made by a Magistrate instead of a Police Inspector who is likely to protect the offender more against improper prosecution or extortion.
20. In my opinion penal legislation fixing the age of marriage should precede or be co-existing with the penal legislation fixing the higher age of consent. The former being a preventive penalty would be more effica-

cious and preferable and if it succeeds would do away with the necessity of fixing age of consent in marital cases.

21. The penal law should be strengthened as the giving of education by Government is too tardy and ineffectual and similarly social propaganda is too slow.

Oral Evidence of Diwan LALCHAND NAVALRAI, M.L.A., Karachi.

(Karachi, 4th October 1928.)

Mrs. O'Brien Beadon: In answer to question 1 you say that there is dissatisfaction with the law of the age of consent as it at present exists. Do you think that the law is generally well-known?

A. Yes; it is known. In villages they might not be knowing it but in cities and towns it is generally known.

Q. Do you come from Larkana?

A. Yes.

Q. What is the marriageable age in Larkana?

A. Among the educated classes it is 16.

Q. What is the proportion of educated to the uneducated classes?

A. I think it is one-third.

Q. Among the remaining two-thirds when do they marry their girls.

A. The Bania classes who are intelligent people follow the Aumils and other educated people and marry their girls later. That would be about one-third and the remaining one-third marry their girls about 11.

Q. When does consummation take place?

A. The custom amongst us, the educated people, is to let the girl remain in the house till she is fully developed. But amongst others the custom is to send the girls away to their husbands as soon as marriage is celebrated, and no Gaona ceremony is practised amongst them. These people form about a third of the total population in Upper Sind.

Q. What is the population of your town?

A. About 20,000.

Q. So in your town about eight thousand people marry their girls under age and about 16 thousand marry them later. Is that so?

A. Yes.

Q. Have you seen any cases marital coming to court under the age of consent law?

A. In my experience no cases come to court.

Q. Why is that?

A. The point is that if there is consummation before 13, the parents concerned take care to see that such consummation takes place only after puberty has been attained. Generally they are very particular about mensures.

Q. But cases do not generally come to court?

A. No. I have seen some cases amongst Muhammadans come to light when there is injury and the parents of the girls take action.

Q. Do you say then that one or two cases have come to light?

A. Yes.

Q. Can you give us details?

A. I remember a case which happened about 2 months ago at Larkana. The police said that the girl was under 13. She was not able to walk properly. She went to a doctor after 5 days and the doctor was of opinion that she was 14. The case therefore did not go to court.

Q. That is a negative case. Have you come across any positive case, that is to say, any case in which it was definitely proved that consummation did occur before 13 or 12?

A. I have no personal knowledge. I have come to learn that there was one such case at Karachi some three or four months back.

Q. Are you of opinion that early marriage causes deterioration?

A. Yes, it does. I have seen girls look emaciated and their progeny weak.

Q. What would be the age of the girls?

A. I have seen a girl about 13 with child. But such cases are very rare.

Q. Do you think that a girl who gets a child early has less vitality than a girl who gets it later?

A. Yes.

Q. What do you think about the children?

A. They are also very weak. They generally talk of headaches or some such things. They are sometimes unable to study.

Q. Is there a large proportion of such children?

A. No; their number is not very large. Since lately educated people are not marrying their boys before 21.

Q. How long since is that?

A. Since the last 5 or 6 years. Now-a-days girls are not generally married before 16 and boys before 21.

Q. We have been told that if we marry boys late there is the danger of their getting immoral. What is your opinion?

A. I do not think there is any such danger. The marriage age should be at 18 and over for boys.

Q. Do you think that if it is fixed at 18 the boy would be straight?

A. There may be some cases in which the boy will go wrong, but generally he will be all right. If it is as high as 21 perhaps there might be danger.

Q. Can you make any suggestions as to how to make the cases come to court?

A. The number of such cases will be very small and it is scarcely necessary to trouble about it.

Mr. Bhargava: Do I understand that so far as the age of consent outside-marital relations is concerned, it should be fixed at 18?

A. I would fix it at 16 outside marital relations.

Q. You might be aware that in section 366A of the Penal Code the age has been fixed at 18. In section 372 also it is the same. Section 366A deals with what we call procurers who entice girls away for the benefit of other people. Would you not make the same provision under this Act and fix the age at 18?

A. In my opinion girls after 16 can protect themselves.

Q. In consideration of the fact that girls of 16, 17 or 18 go out to schools and many of them do not belong to well-to-do families, would you like that the fear which exists in the minds of parents in this respect should be got eliminated by the age being raised?

A. As far as I am aware, in the towns and cities there is no such fear. As for the villages there are no schools.

Q. So far as intra marital relations are concerned, the present age of consent is 13? Would you be in favour of raising it to 16?

A. No; I would like it to be raised to 14.

Q. At what age does a girl generally menstruate?

A. Between 13 and 14.

Q. You are further of opinion that at least 2 years must elapse before the girl is allowed to have intercourse.

A. I said three years. I consider a girl will be fully mature at the age of 16.

Q. Are you then of opinion that the age of marriage for girls should be 16 and the age of consent within marital relations 14?

A. Yes.

Q. Do you not realise that the age of consent in marital cases should be the same or more than the age of marriage, because once the age for marriage is fixed, cohabitation is not possible before that age?

A. What I meant was that Sarda's Bill should precede this bill and that the age of marriage should then be fixed at 16, but that the age of consent can for the present be raised from 13 to 14. But since I understand that consummation is not possible before the age fixed for marriage, so far as marital cases are concerned I would fix the age of consent at 16, the same as the age of marriage.

Q. Do you not thereby eliminate the possibility of any cases against husbands?

A. Certainly.

Q. Supposing this age for marriage is not accepted by the majority of people and the age is fixed at 14 as in Sarda's Bill, would you still be of opinion that in marital cases the age of consent should be 16?

A. I would be, but people generally would not like.

Q. Supposing there is dissatisfaction, would you still be in favour of raising the age of consent to 16 and fixing the age of marriage at 14?

A. Yes.

Q. The fixing of the age for marriage or consent makes the question of age very important in a great many cases. Do you not therefore think that a system of registration of births should be enforced?

A. Yes.

Q. When a very accurate birth registration is secured, would you be in favour of registration of marriages?

A. Not if the registration of births could be accurately done.

Q. Supposing this Committee proposes that the registration should be made absolutely obligatory and absolutely accurate, do you not think that if there is both registration of births and marriages the entries will probably conflict with each other?

A. Yes; that will be productive of confusion. Even now in the case of school going children the ages in the birth register and in the school register do not tally.

Q. And a person, if he knows that his statement will be used against him in criminal cases would not give the correct age.

A. Yes.

Q. So far as marital cases are concerned, you want that the parents of the boy and the girl should also be punished in case they are responsible for the celebration of the marriage. You might be aware that under the present law of consent the parents are not responsible for the infringement of the law. Do you still adhere to your opinion that the parents must be made responsible for the breach of the law?

A. I agree that the parents need not be made liable.

Q. Supposing some age is fixed for marriage, do you think there will be any difficulty on account of the people not being able to count their ages?

A. No; I have often seen women give their ages correctly. Of course amongst the cultivator classes it may be different.

Q. So far as cities are concerned, is this system of registration of births fairly accurate?

A. Yes, in cities where it is compulsory and a penalty is attached.

Q. Is this penalty generally enforced?

A. Not always; municipalities know how to be too kind.

Q. In villages there is no complete system at present prevalent.

A. No.

Q. What would you propose to make it absolutely complete?

A. At present it is done by the Pound Munshi and the Tapadar. But I think that some obligation should be placed on the Muktiarkar of the village.

Q. Would you place the obligation on the parents?

A. No.

Q. Would you make it penal?

A. Penalty should not be enforced like that. It will then become very unpopular.

Q. To whom would you give the authority to prosecute in such cases?

A. It should be just as it is at present.

Q. Would you not give the power to panchayats or some associations?

A. It will not be operative. There are dissensions in the panchayats and there is no village where there is not more than one panchayat. Even among the Muhammadans there is no village in which there is no dissension.

Q. Is it a fact that these panchayats are not continuous and their membership is not permanent?

A. There is no constitution in these panchayats. Their slogan is once a Mukhi always a Mukhi.

Mrs. Brij Lal Nehru: You say that you would not give the right of complaint to panchayats or other societies. Would you be in favour of forming special institutions, say for instance a body of 3 or 4 people trusted by the public to be given this power by the Government?

A. No; for I always see mischief in such cases.

Q. Can there not be found in every locality two or three people trustworthy enough to be entrusted with this power?

A. I do not think it will be safe.

Q. Cannot we have provisions to safeguard against misuse of that power?

A. I say that if there are cases in which injuries have happened those cases are bound to come to light. If there is no injury then I do not think there would be any use in bringing up a case.

Q. Why?

A. Supposing the intercourse takes place and there is no injury, I do not know how it will be dangerous. If a complaint is made in such cases it will bring in confessions and admissions which will ultimately create some complications. In cases where there is injury I do not think such cases will remain concealed.

Q. That state of things exists at present also. By giving the power of complaint to committees only, you restrict it. Why then are you more apprehensive of it?

A. In such cases I do not think there should be interference by a stranger.

Q. Do people in your part of the country know the existence of this law?

A. Yes, even the uneducated people know it, because of their litigious character.

Q. Is that only about the extra marital cases which come to court?

A. No; even otherwise.

Q. Do you think that if the age of consent is raised and the rest of the provisions of the law are retained cases will come to light?

A. Yes.

Q. Is there a large section of educated ladies in your part of the country?

A. Not very large. We have many educated ladies in Hyderabad.

Q. Do they advocate late marriages for their children?

A. Yes.

Q. Do you think that public opinion is very much advancing in this connection?

A. Yes.

Q. What is generally the age of the girls among whom cases of rape and seduction take place in this part of the country?

A. They are all mature girls over 16. They are very rarely under 16. Seduction cases are all above 16.

Mr. S. C. Mitra: You say that the age of marriage for girls should be 16 and the age of consent within the marital state should also be 16. At the same time you say that the age of consent outside marital relations should also be 16. Do you maintain that there should be no difference?

A. There ought to be no difference from that point of view.

Q. May I request you to reconsider whether there should be no difference between the cases in marital relations and cases of helpless girls who are enticed and forcibly violated? Should not a higher age be fixed in such cases so that we might afford protection to those girls?

A. In my opinion after 16 they are able to give an intelligent consent.

Q. Do you not feel that at a higher age they will attain the age of discretion and will be more developed in body?

A. They are fully mature both physically and mentally at 16.

Q. Do you think that there is a large number of kidnapping cases above 16?

A. They are abductions mostly amongst Muhammadans. Both the offenders and the girls are from Muhammadans. That will be hardly amongst Hindus.

Q. Is the method of open trials one of the reasons why these cases do not come to light?

A. No.

Q. If there be special procedure, if the trials are held in Camera and a preliminary investigation is conducted by the Magistrate before the cases are instituted, do you think more cases will come to light?

A. I do not think that will increase the number of cases coming to light.

Mr. A. Ramaswami Mudaliar: We have been told that in the districts of Larkana and Shikarpur early marriages are very common. Do you bear that out?

A. In villages they are common. But even there also on account of the popular view in towns they are increasing the age of marriage.

Q. Since how many years?

A. 6 or 7 years.

Q. We were told that amongst particular communities marriages at 10 and 11 were common? Is that so?

A. It is common amongst the Bania classes in the villages. In towns also some cases of marriage at 11 and 12 do happen, but the people who perform such marriages are looked down upon.

Q. If the marriage takes place at 11 or 12, does consummation immediately follow?

A. No; I have said that unless and until they see the mensur, the mother or the mother-in-law of the girl will not allow it.

Q. If the girl attains puberty at 12 or 13, does consummation immediately follow?

A. It is usually a few months after. By that time the girl becomes 14.

Q. Do you think that there are cases of consummation before 13?

A. They are very rare.

Q. Do you think that if consummation takes place before 13 it takes place with the knowledge of the parents of the girl?

A. I should think it would, because the parents of the girl would know if the boy and girl are mated.

Q. In this part of the country do the parents of the girl send her at a particular stage to the husband's house?

A. Usually the girl is sent to her husband's house after she attains mensus.

Q. Do you think disparity in age in cases of marriage is common, for instance a girl of 13 being married to a man of over 30?

A. There are such cases, but they are very few.

Q. In such cases if cohabitation takes place before 13, will not the parents of the boy know it?

A. Yes; the mother-in-law of the girl will know it if not the father-in-law.

Q. Is there any special ceremony amongst you at the time of cohabitation?

A. No. The Garbhadan and the Gaona ceremonies do not exist here.

Q. If the girl is below 13, would you make the parents of the boy responsible for bringing about the consummation?

A. Society is different in different places. Environments are different. I do not think that such things will happen now. But there are certain classes of people who think it is right to have consummation after marriage whether there has been maturity or not. That is due to custom and I do not think that they should be penalised.

Q. But the law penalises cohabitation before 13. What is your objection then to make parents liable if the cohabitation is below 13 with the knowledge and consent of the parents?

A. Now the parents concerned would generally be the mothers-in-law I think a general rule like that penalising them would be bad.

Q. At present for ages below 12 the punishment is transportation for life. Will you let it remain?

A. Yes; it should remain as it is.

Q. Is this consummation of marriage immediately after marriage a recent development in Sind?

A. It is not a recent one at all.

Q. Is there no interval between marriage and consummation?

A. It would be left to the parents to decide what the interval should be.

Q. What is generally the interval?

A. Generally it is one or two months.

Q. With reference to the procedure you said that you would leave it to the parents or guardians of the girl. Do you realise that unless there is a case of extreme injury the parents are not likely to complain?

A. Anybody will come to know it and the parents cannot conceal it.

Q. But anybody cannot complain.

A. When there is a law and it says that information should be given to the proper authorities, when the people come to know anything they will not conceal it.

Q. Therefore would you authorise anybody to have the right of complaint in case they think that an offence has taken place?

A. I have no objection to that.

Q. In such cases would you suggest that the previous sanction of a Magistrate should be obtained before a regular enquiry is held? There

are even now certain sections like 195, 196, 197 in the Penal Code under which certain offences cannot be tried without previous sanction.

A. There ought to be a provision like that.

Q. Even if the marriage age is fixed at 16, would you advocate the age of consent also?

A. I have said I would.

Mr. Kadri: You say there have been very few cases of the breach of the age of consent law as amended in 1925. Do you think sufficient time has elapsed since then to warrant a further rise in the age now?

A. I think, it has. I think the public are now prepared to have a further rise. But, as I have already told you, people would protest if it is at once raised to 16 from 13.

Q. When you say that the minimum age of marriage should be 16 it follows automatically that the minimum age of consent should also be 16 because there can be no cohabitation, legally, till the girl is married.

A. I think the people would not be prepared for a sudden rise to 16.

Q. What age would you recommend for extra-marital cases?

A. 16.

Q. You are aware that if a man removes a girl under 18 from the guardianship of her parents or other guardians for purpose of prostitution he makes himself liable for punishment. You also know that the age of majority at present is 18. In view of this would you still recommend 16 or extra-marital cases?

A. I think any opinion should remain the same. On some cases the age of majority is 21.

Q. Have you any experience of the way in which birth registers are kept in rural and urban areas?

A. I have seen many cases in courts where these birth registers have been produced. They are never complete.

Q. Some witnesses have said that in rural areas these registers are kept very satisfactorily.

A. I don't agree at all.

Q. Would you make any suggestions as to how these registers should be kept?

A. The Mukhi should be made responsible for helping the Munshi or the Tappadar in keeping these registers.

Q. Would you like to have a column in the birth register giving the name of the child?

A. I find that this name question has been made much easier in towns and cities because the vaccination register contains the name.

Q. But there is no corresponding entry in the birth register.

A. According to the custom in certain cases the name is not given till some days after birth.

Q. Have you any objection if we make it obligatory on the parents to make a supplementary report 10 days, say, after giving the name of the child?

A. No.

Q. You are not in favour of having any registration of marriages. Often cases arise where it is not certain whether a marriage has actually taken place and some trouble arises as to the amount of the dowry and such other things. Would not registration be useful in all such cases?

A. Among Mohammadans it is necessary.

Q. Why?

A. Among the Hindus everybody knows when the marriage takes place. It is an open act. I had only one Hindu case in Abura Taluka where the girl had come from Jessalmer. There also it was proved that the marriage had taken place. While in the case of Mohammadans I have seen many cases

of difficulty under Section 498. They bring in two Mullas as witnesses and say that the marriage had taken place.

Q. So far as the age is concerned you don't think that the register would afford good guidance.

A. But how would you have the exact ages of the parties? The parties will give it only by guess. They have no horoscopes, etc.

Q. You won't leave any power of investigation to the police in marital offences as now provided for under Section 561 of the Criminal Procedure Code. Would you be satisfied if the powers of investigation are given only to the Deputy Superintendent of Police?

A. No. I will take it out of the hands of the police and give it to the Magistrate.

Q. But how will he collect evidence?

A. It will be very easy to do so. In the village the Mukhi and the Zamindar would help the Magistrate more willingly than in the case of police. They help the police only under compulsion.

Q. But if it is a Raiyatwari village?

A. There are no Raiyatwari villages here. Here the Zamindar governs first and the government later.

Mr. Kanhaiya Lal: Have you village panchayats throughout Sindh?

A. Yes.

Q. Are they working satisfactorily?

A. There are always factions. I will call it a happy village where there are no two Zamindars fighting, where there are no two panchayats fighting.

Q. Is there any method of stopping these quarrels and improving the panchayats?

A. We have been trying our level best. The Mukhis in different villages have been trying their level best. In some villages they have been successful and in others they have not been.

Q. What is the existing constitution of these panchayats?

A. No constitution. There is a Mukhi and the other people of the village are called panchas.

Q. Are the Mukhis elected by the people?

A. No. They are hereditary.

Q. We were told that there is a Dal Panchayat and they elect the Mukhi.

A. There is one at Hyderabad, but it is not common.

Q. If we have a more satisfactory system of panchayats in operation, you think that will prove satisfactory.

A. I will give you an instance of that. In Larkana there were these panchayats. I found that the business was going from bad to worse and I thought that they should be consolidated. I could see that the difference was only about the Mukhi. The question was who should be the Mukhi. I suggested that there should be a system of electing the Mukhi at the time of the meeting. That is the Sar Panchayat at Larkana. The system is working on very well. The Mukhi has to be elected by the panchayat and the members of the panchayat have to be elected by the Dal Panchayat.

Q. If you have a system of that character, would you like to give these panchayats the authority to file complaints and look after all cases of infringement of the law of consummation?

A. When I am quite satisfied that there is no difference between them.

Q. Will you agree that municipal boards, local boards and district boards should constitute sub-committees to look after these cases.

A. No. Because I find dissensions in them too.

Q. These dissensions occur throughout India. Can't some way be found out of the difficulty and vigilance societies or boards constituted?

A. I think the time may come, but at present the time is not ripe for it.

Q. Is it on account of the absence of a good scheme or is it on account of inherent dissensions that these panchayats are not successful?

A. I think it is due to inherent dissensions among them.

Q. Is it not possible to find even three or four public workers to constitute a vigilance society?

A. I don't think.

Q. Don't you think that cases are suppressed or remain undetected?

A. No. They are rare.

Q. Then supposing we raise the age to 16, possibly we might require a strong agency to look after these cases and bring them to light.

A. I think so.

Q. Well, can you then suggest any measures for providing this agency?

A. If there are many cases they will come to light even without any particular agency or institution for the purpose. I think the people in the town will come to know about the case and the whole thing will be out. We have got public spirited people. We have got these Sudhar Sabhas.

Q. Would you trust these Sudhar Sabhas to do this work?

A. They might inform the people and the Mukhi.

Q. Would you allow social reform organizations to make a report to the police or to the District Magistrate?

A. I would not.

Q. Then who is to apply for sanction or give the information?

A. The relations or neighbours would come forward and they are the persons to whom I would give the authority to apply for sanction.

Q. Would you also give the same authority to give information to the Sudhar Sabha?

A. No.

Q. You would not give the authority to any individual living outside the Mohalla.

A. No.

Q. If there is registration of marriages, giving the names of the marrying parties and their ages, would it not be helpful in bringing cases of infringement of the law to light.

A. I don't think. These ages could not but be guesses. That will be an additional opportunity to produce false evidence.

Q. Is it not reasonable to think that in the majority of cases people would give proper ages at the time of registration of births or registration of marriages?

A. They may or may not. They have got no horoscopes. In my town the majority of the people have got horoscopes but I don't think in the whole of Sindh they keep these horoscopes. If correct ages are to be entered in the register, the horoscope must be seen and an entry made in the register.

Written Statement, dated the 15th August 1928, of Mr. D. D. NANA-YATI, I.C.S., District and Sessions Judge, Sukkur.

3. Crimes of seduction and rape are particularly rampant in Sind, especially the former.

It is difficult to see how the amendment of the law in 1925 raising the age of consent to 14 years could result in preventing or reducing the number of rape cases. In so far as the amendment is successful its effect must be to bring into the category of rape a certain number of cases

which would not have been classed as such before the amendment. If what is meant is to ascertain whether the amendment has succeeded in reducing the frequency of sexual intercourse with girls under 14 years, the answer I am afraid must be in the negative.

The fact seems to be that cases in which intercourse takes place with the consent of the girl generally do not come to court at all. Where such cases do come to court because the intrigue has been somehow discovered by the relatives of the woman, she always pretends to have been forced to submit to the intercourse and the accused never pleads the woman's consent, so that the question of consent does not arise at all. The accused in such cases usually deny the sexual intercourse entirely and often set up a worthless alibi; so that when the fact of intercourse having taken place is proved from the medical or other evidence the court has generally to accept the woman's statement that she was violated against her will. The case must be extremely rare, and has been unknown in my experience, in which a girl of 13 or 14 after submitting willingly to sexual intercourse, subsequently denounces her lover; and in which the accused admits the intercourse but pleads that the girl was a consenting party. That being so, the occasions on which the amendment of the law in 1925 has actually to be invoked to sentence an accused person must of necessity be extremely rare. This is borne out also from actual statistics. In the districts of Sukkur, Hyderabad and Larkana for which I have made inquiries, i.e., for the greater part of the province of Sind, not a single instance is on record in which the amendment of the law was brought into use. That however does not mean that the amendment was useless or unnecessary. If as is generally admitted, sexual intercourse before the age of 14 years is highly injurious for the girl, it must be made punishable whether it takes place with her consent or not.

As regards reducing cases of seduction for immoral purposes the amendment could not be expected to do more than the already existing law on the subject contained in Section 366, Indian Penal Code, which adequately punished seduction of girls under 16 years. It might possibly have had some effect in strengthening that law but it could not be very much since a person who would not be deterred by the penalties provided in Section 366, was not likely to be deterred by the amendment of Section 375, Indian Penal Code, with regard to age of consent.

4. The amendment of 1925 has undoubtedly stimulated public opinion and has had some effect in protecting girls under 13 both by putting off marriage and postponing consummation beyond that age; but the effect would have been greater if some machinery had been in existence for bringing to light breaches of the law. The work is of a kind for which police agency is specially in-appropriate and useless and for which no other machinery has been created. Social service agencies like the Seva Sadan Society of Bombay, Vigilance associations and other bodies interested in women's welfare should be stimulated to make regular periodical inquiries into this matter within their respective territories with a view to bringing to light breaches of this law.

5. The usual age at which girls attain puberty in Sind appears to be about 13 to 14.

6. Cohabitation is not common in Sind before puberty though cases among Mahomedans are not unknown. It is almost universal soon after puberty in all classes except a few advanced and educated castes. And it does sometimes take place before the girl has attained 13 years of age if she has attained puberty before that age. Such cases hardly ever come to court for want of any machinery to bring such cases to light. Only one such case has come to court in recent years (No. 62 of 1923 of the Sukkur court) and the girl was under 12 years of age. It is not clear whether the girl in that case had or had not attained puberty.

9. This is really a matter for medical and health experts to settle. The best opinion seems to be that at least until 2 years after puberty a girl

could not be said to be sufficiently mature for the purpose of childbearing and that consummation should not therefore take place before that time.

10. Ordinarily at the age of about 16 years. But I doubt if the Criminal law could safely fix a higher age limit than 14 years for constituting the offence of rape irrespective of the question of consent. The law has to make allowance for cases of early maturity also. It has not been proposed to punish sexual intercourse with a wife who is not under 14 years of age. It is not a practical proposition to suggest a higher age limit in the case of married girls in India. That being so I fail to see sufficient justification for fixing a higher age limit in other cases. If sexual intercourse is harmful at that age from a health point of view it is far more harmful within marriage where it is likely to be frequent, and almost certain to result in early pregnancy, than the casual, infrequent and clandestine intercourse outside the marital relation which a girl of over 14 but under 16 years may sometimes indulge in. Moreover the element of moral turpitude involved in an act which the state proposes to punish as a crime cannot be safely ignored. A crime that is to be punishable with transportation for life must be one which will excite the severest condemnation of all right thinking people. But when a lad and lass just bursting into adolescence who happen to be thrown into each others' company by force of circumstances, forget themselves in a moment of sexual attraction, are we to view the boy's act as a grave crime, while the girl who may well have been even more to blame in bringing it about is not held accountable in any way? Such a state of the law would not accord with the public's notions of moral turpitude and if the law takes up such a position it is likely to defeat its own end.

11. I have not personally come across such cases but my inquiries have disclosed the following.

Mr. Thakurdas, F. C., Sub-Judge and Assistant Sessions Judge of Sukkur, says: "Yes I have come across numerous cases in which premature or early consummation has resulted in serious consequences to the female.

I give below a few cases of details of age and injury sustained:—

Age.	Nature of injury.
1. Thirteen years . . .	Death in first childbirth.
2. Sixteen years . . .	Consumption.
3. Fourteen years . . .	Death in first childbirth.
4. Thirteen years . . .	Deformed and stunted growth and ultimately death in second childbirth."

Mr. Dayaram Punwani, Government Pleader and Public Prosecutor, Upper Sind Frontier District, says:—"Yes. A man at Shikarpur committed rape on a girl of 10 or 11 years of age. She bled profusely and was unconscious for long time and there was every danger to her life. The case had come to court."

R. B. Dr. Kothary, the Civil Surgeon of Sukkur, says:—

"Many cases have been met with. Girls marrying at 13 and being consummated have been seen to suffer from tubercle of lungs, osteo-malaria, pernicious anaemia, hysteria and insanity, premature senility and early death. The progeny of such unions is weak, emaciated and unable to resist the onslaught of diseases. Eventually the duration of life is short."

17. As indicated above I think that the age limit in case of rape should be fixed at 14 for both marital and extra marital offences. If however it is necessary to prescribe a lower maximum sentence in the case of a husband, in order to placate public opinion, I would not object to the enactment of Section 376-A, as proposed in Dr. Gour's bill.

20. Legislation fixing the minimum age for marriage is in my opinion likely to be more effective in achieving the desired object than age of con-

sent legislation by itself. Both methods of attack are necessary for achieving the object in view. Once legislation is enacted and enforced even the most orthodox section will speedily come round. But if it is left to education and propaganda to bring them round it will take centuries and meanwhile the lives of innocent girls will continue to be ruined and the vitality of the nation as a whole lowered. The case of the abolition of "Sati" is an example in point to illustrate how legislation may bring about social reform.

Oral Evidence of Mr. D. D. NANAYATI, I.C.S.

(Karachi, the 4th October 1928).

Dr. Beadon : You say that you have not yourself met with any cases of injury to young girls.

A. No.

Q. Is it your opinion that early consummation is detrimental?

A. Certainly, from all that I have heard from people qualified to speak on the matter I fully believe that early consummation is highly detrimental to the health of the young girls.

Q. Are cases of seduction and rape very common in Sind?

A. Yes.

Q. You have been working in Sukkur?

A. Yes.

Q. How long have you been there?

A. Three years.

Q. Does consummation take place immediately after puberty?

A. In some cases immediately after puberty and in some cases before it.

Q. How long before?

A. The girls are married at 11 and 12 and sometimes the age goes down to 9.

Q. What happens to those girls; are they sent to their husbands or do they live with their parents?

A. The majority live with their parents until they have attained puberty.

Q. When do girls attain puberty?

A. About 13.

Q. Then there is no consummation before the age fixed by the amendment of 1925?

A. Not usually.

Q. But cases do occur.

A. Yes undoubtedly.

Q. Do these cases come to light?

A. Not in the sense that they are brought to the court but hospitals do get them.

Q. Why do they not come to light?

A. Because there is nobody willing to give evidence and there is nobody to report.

I have brought with me the record of an actual case in which the husband was prosecuted for committing rape on his wife and the judge was forced to give a nominal sentence merely because he thought it was in the interest of the girl that the case should not proceed further. I have got the judgment in case the Committee is interested.

Q. What is the age in that case?

A. About 11 years.

Q. Was the girl seriously injured?

A. There was some injury but I do not find it stated that there was serious injury.

Q. How long ago did it happen?

A. This is a case of 1923. The case was tried by my predecessor and in his judgment he said:—The case is one of the most unusual and at the same time perhaps one of the saddest that I ever (had) to deal with. So far as I can see the best course is to accept the plea of guilty and pass a nominal sentence on the accused. The girl Fatima is a very frail little creature and it is her future in life that is to be considered. Finally he gave imprisonment to the accused till the rising of the court.

Q. Is that the case of a Mohamedan?

A. Yes.

Q. Have any similar cases come to court?

A. No similar cases has been brought to light.

Q. Although you think they occur?

A. Certainly.

Q. Can you make any suggestion to bring them to light?

A. The only thing I can suggest is that social reform activities should be focussed in each district into some sort of society which should be recognised by the State and municipality and subsidised, to whom power should be given to make complaint as private information is received.

Q. We are told that these cases do not come to court because of the suffering that will probably be inflicted on the wife. Would you give power to these organisations to protect wives?

A. But it is not possible to protect the wives. No society can do it. If there is an age of consent law at 16 you can give power under the law to the magistrate to order that the girl should be segregated and kept in a suitable home.

Q. If the girl is protected up to 16 it is possible that her husband may not accept her.

A. Difficulties will arise undoubtedly.

Q. Would you be in favour of raising the marriage age or raising the age of consent?

A. Undoubtedly the raising of the marriage age would be more beneficial way of doing it.

Q. If you went beyond 14 it would not be acceptable to all?

A. They would not accept it.

Q. If it is enforced?

A. How can you enforce it because if we fix the marriageable age there will be a great deal of opposition and people will come and say that the girl is 15 or 16 though actually she is of less age. The medical evidence would come in and—

Q. That is not satisfactory. I am a doctor myself and I can say what a difficult thing it is to estimate age.

A. Still the tendency would be to protect the girl.

Q. Do you think that the mere fact of having marriage legislation would protect girls?

A. Yes, people are law abiding.

Q. What about registration of births? Are you satisfied with it?

A. I do not know especially in Sind; I have been in the Bombay Presidency.

Q. In the Bombay Presidency generally is the registration of births satisfactory?

A. It might be improved but it does work.

Q. Are you generally fairly well satisfied that the registration is reliable?

A. Where a certified copy is produced it is reliable.

Q. What percentage? Would 50 cases out of 100 registered?

A. I think much more than that.

Q. How much?

A. I am not able to say but I think a very large percentage is registered.

Q. The difficulty in such cases is that it is not possible to identify a person. If a woman has 3 girls registered how will you identify whether it is 1st, 2nd or 3rd?

A. I suggest that whenever a child is named it should be the duty of the parent to register the name as well. It will be supplementary after the first registration.

Q. Would you have a separate column for it?

A. I should have a separate column for the name which should be left blank and it should be the duty of the parent to report later on.

Q. Would you provide any penalty for its breach?

A. The same penalty that exists now which is a small fine.

Mrs. Brijlal Nehru: Can you give any reasons why you have suggested 14 for extra-marital relation?

A. I have not said that 14 is the limit; I have said that it should be a limit in case of rape only. I am quite open to considering legislation in which you would fix a higher age limit with lower penalty.

Q. What is that penalty that you would suggest in extra-marital cases?

A. I believe in England you have a code of illegal carnal punishments which prescribes punishment up to two years and applies to girls between 13 and 16. I see no objection to having a similar regulation in India.

Q. But your suggestion for India is 14 and 16?

A. That is for the committee to find which is acceptable to the majority of the people. I would say protect girls below 14 and between 14 and 16 have a smaller penalty.

Q. But in no case would you go beyond?

A. I do not think it is practical politics to enforce anything higher by law.

Q. Why do you think so?

A. You will have such a great volume of orthodox and backward opinion against you that the Committee will find out that it is impossible to enforce it.

Q. That may apply to intra-marital cases while we are considering extra-marital cases just now?

A. Below 14 I will prohibit entirely whether extra-marital or intra-marital.

Q. I am confining myself to extra-marital. Would you make it absolutely criminal? Would you bring it under the heading which you mentioned just now?

A. Personally I should like to have the limit at 16 even for extra-marital cases, that is for misdemeanour.

Q. What is your reason? Do you think a girl in India is intelligent enough to give an intelligent consent at that age and can understand all the consequences of her act?

A. I do not think they understand all the consequences but probably the blame is equally shared by the girl as well as the man in such cases.

Q. You will not give a slight punishment still further reduced after 16?

A. The difficulty would be practical in that case. You will never find anybody coming forward to prosecute and if there is anybody coming you would not get any evidence.

Mr. Bhargava : The crimes of seduction and rape are particularly frequent in Sind. May I know at what ages these girls are seduced?

A. It varies from the age of 10 upwards. Generally these cases relate to girls of 17 or 18.

Q. If that is so, may I know what your special reasons are, why these girls of 16-18 should not be protected by some law. They are protected against seduction at present if they are taken out of the lawful custody of guardian up to the age of 16. If a person is guilty of taking away a girl from the lawful custody and then after sometime has sexual intercourse with her after the present prescribed age for consent don't you think he is equally guilty of kidnapping as well as rape?

A. The guilt may be equal but I am thinking of the practical difficulty. The law would be a dead letter for want of prosecuting evidence.

Q. Supposing this evidence is forthcoming in these cases then your opinion is that the age may be increased to 18 safely?

A. I would have no serious objection to that.

Q. At present under section 366-A., the age is 18 for seducers who procure girls, etc. In cases in which it is proved that a man is not doing that nasty work for another, is it not reasonable that the punishment should be the same?

A. I should say that in that case the crime is not so great as in the case of procurer.

Q. Supposing a man of 20 a total stranger belonging to a different religion to that of the girl elopes with her is not the law then very seriously handicapped in her protection?

A. If he elopes with her he brings himself under section 366.

Q. But that covers up to 16? If there is a change in sections 365 and 366, and the age is made 18 would you approve of that? The age of the seducer is more than 20.

A. Yes.

Q. As regards marital cases also do you not think that if the offender is of rather immaturo age up to 18, the punishment should be less than in those cases in which the offender is of a bigger age? The girl may be over 14.

A. I agree to that.

Q. At present in Sarda's Bill we have got this provision that if the offender is a boy of the age of 18, he is only fined and in default of the payment of fine also no imprisonment is awarded. Do you agree to that provision?

A. I have not considered it. *Prima facie* it seems to be reasonable.

Q. As regards marital cases are you not of the opinion that even if this law is passed cases will not be very many and very few cases will come to court?

A. That is what I have said. It will be very difficult to detect breaches of the law.

Q. In such cases is it not better to arm the parents of the girl and the neighbours or the general public under certain circumstances and not to arm those societies which do not exist even now?

A. Everybody's work is nobody's work.

Q. You are in favour of authorising these societies particularly and taking away the right of complaint and prosecution from other people?

A. I would not take it away from parents and relatives but I would not authorise any neighbour or institution to go and launch a complaint.

He could go and move the society who would make enquiries through the proper officer and then launch prosecution on that evidence.

Q. Don't you think that under the present law there are some sections like 250, Criminal Procedure Code, and there are other provisions which militate against such fear?

A. They are not sufficient in my opinion.

Q. Supposing these provisions are further strengthened by making a provision like a provision in the Sarda's Bill relating to taking security? You may be able to get an individual who may be made responsible whereas in the case of a society you will not get a man. They will not be personally or individually responsible for harassing any person?

A. What is the penalty provided?

Q. These two safeguards: (1) before the accused is summoned the courts will hold a preliminary enquiry. Secondly the individual whosoever he is should be asked to deposit a sum as security.

A. I do not think that the latter provision is possible because it would prevent genuine complaints coming forward.

Q. Do you not think that at present there are no such societies in existence?

A. There are few like the Seva Sadan Society of Bombay. Only in big cities you find these societies.

Q. May I suggest that at least for the coming 10 years you will not find such societies in the villages.

A. You will be able to form them at headquarters and it will be their business to know what is taking place in the villages in their jurisdiction.

Q. Would you rather prefer that in big municipalities a sub-committee of the municipal councillors with right to co-opt other social workers can be formed and recognised by the municipal law as being one authorised to make such sort of complaints?

A. I have no objection.

Q. In regard to villages would you prefer that a sub-committee of the district board co-opting other social workers as they like and having the statutory recognition by law may be formed?

A. I have not thought out the matter but I should say it is feasible.

Q. If official recognition is given to the abovementioned societies would you prefer that the societies as they exist now village panchayats torn with factions and having no continuous existence, the membership being also not recognised—should not be given any power?

A. They should not be entrusted with any power.

Q. You have pointed out that there should be some sort of registration. May I take it that you prefer registration of births to registration of marriages?

A. There is no objection to that being instituted.

Q. So far as registration of marriages is concerned do you not think that the obligation will be generally on the parents to report the matter?

A. Yes, I suppose so.

Q. In a case when the parents have married a girl of an age whose marriage is prohibited by law there will be an attempt secure themselves against the penal consequences of the act.

A. Yes.

Q. Don't you think there will be confusion between the two dates—date of birth and date of marriage?

A. The date of birth will be more reliable.

Q. So that if the birth date is more accurate and reliable would you like to create confusion about dates by insisting upon registration of marriages?

A. I think it would be desirable to have the system of registration of the marriages if it is possible.

Q. Because it would help you in divorce cases?

A. Not only that but from various points of view. If the parents had no idea of having the consummation of marriage earlier they would give the right date and if anything happened otherwise it would be a safeguard.

Q. So far as marriage is concerned it will not be helpful because then there will be temptation to give wrong dates to secure themselves against the penal law.

A. In the interest of society generally the system of registration would be desirable.

Q. Don't you think the cost would also be prohibitive if you propose to have a registrar in every village?

A. Possibly the cost may be too high and that may be a fatal objection to instituting it but that would depend on the details being worked out.

Q. When you send a boy to jail or fine him then the relations between the girl and the boy will be strained. Do you not think that some sort of divorce law should be evolved?

A. This Committee is not concerned with that question. I confess I have not paid any attention to the matter and I am not in a position to answer it at this stage.

Q. You have said that the orthodox people will not accept the age of 13?

A. That is my opinion.

Q. Do you not think that the orthodox opinion favours marriages before puberty?

A. It does.

Q. People would not care if it is 13 or 14 but the real objection is that the marriages may take place before puberty. Don't you think so?

A. Another factor would come in if you raise the age limit beyond 14. People certainly have religious objection but other practical objections would also be brought forward, whereas if you fix it at 14 people would say that their ancient customs were different which should now be changed.

Q. You have said that you are of opinion that injury to the child and to the mother is absolute before 14?

A. That is what I could gather.

Q. Supposing it is absolutely true, do you not think that the legislature should not care for this dissatisfaction when the national interest of the whole country is considered?

A. I say that emphatically. Legislature should not consider it up to the age of 14; they should put this down by a firm hand.

Mr. Mitra: If left to yourself would you suggest that the age for consummation should be 16 or thereabout?

A. Even higher would be desirable. I have got a daughter who is 17 who is still unmarried.

Q. If you are to legislate looking to the people will you legislate apart from the agitation at 16 or 17 for the consummation of marriage?

A. When it comes to legislation it is different. I would not consider it feasible to fix too high a limit.

Q. Don't you feel that apart from the full development of the body in a country like India where illiteracy among the women is so very enormous that they should be protected till they attain the age of discretion? Do they not require more protection than any other country?

A. What I feel is that if you attempted too much you may not achieve anything at all.

Q. Don't you feel that as regards the fixing the higher age for extra-marital cases there will be no objection from the people at least?

A. There will be no opposition, but the question will be that you will be enacting a law which will be very difficult to enforce and may just remain a dead letter.

Q. I was just thinking of the case; whether these boys are taking them away by force?

A. When it comes to actual taking away section 366 is there. It is a fact there are very few cases against this under this law. If you are talking of raising the age under section 366 to 18 I entirely agree.

Q. Is it not a fact that there are very few cases that come to court under the law of age of consent?

A. Yes.

Q. Is it not one of the reasons that our girls fear that they will be exposed to the difficulties of an open trial?

A. Yes.

Q. Do you suggest any camera trial or some such device should be adopted in these cases?

A. I should think that we should give power to the court to hold a trial in camera if it thought fit to do so but I would not lay it as a general proposition that all the cases should be in camera because I believe that force of publicity is a very good trial.

Mr. Mudaliar: Would you advocate a previous sanction being granted before the trial is begun?

A. That would only transfer enquiry and make two enquiries instead of one.

Q. Will you please refer to the judgment proceedings which you referred to. The age of the girl was 11 years and the age of the boy was 16 or 18 years. Would you approve of the sentiment that the trying magistrate gave expression to?

A. I do not know about this particular case but I can well imagine cases in which the judge who gave a very nominal sentence was forced to do so on account of the consideration of the future of the wife.

Q. But this consideration will always arise in cases of marital offences. Would you then suggest that instead of leaving it to the discretion of the magistrate the punishment should be made less stringent than it is now?

A. I do not think the system of fine only would be effective. It would not have the same deterrent effect as imprisonment. There may be cases in which sentence of imprisonment may suitably be awarded and the fact that such sentence exists in the law would itself be a deterrent factor.

Q. Would you make a distinction between the ages of the child wives?

A. I think it would be too difficult to have a sliding scale of punishment in practice inasmuch as prevention is better than cure. That is exactly the reason I say that you prohibit marriage up to a certain age.

Q. You have said that even if marriages are prohibited this supplementary legislation of the age of consent will be required?

A. In cases before the prohibition law for marriages becomes actually operative.

Q. Even supposing it is possible to get through the Legislative Assembly a bill fixing the age of marriage at 14 don't you think the age of consent should be raised?

A. The law of the age of consent should be there.

Mr. Kadri: Would you favour a suggestion that benefit of section 562, Criminal Procedure Code, may be given in suitable cases?

Q. Would it not be desirable in a larger number of cases to give that benefit?

A. On the other hand if you provide that alternative the deterrent effect of the law might vanish to a very great extent.

Q. But even under the present law it is open to the magistrate to give the benefit, is it not?

A. Yes, in cases of juvenile offenders only.

Mr. Kanhaiya Lal: If there is a provision requiring the previous sanction of the magistrate to be obtained before a prosecution is launched, would there not be a risk of evidence disappearing on account of the delay?

A. Not very much but there would be some danger.

Q. Do you propose to make the crime cognizable in marital cases?

A. I think under the present conditions I would hesitate to make it cognizable.

Q. I want your recommendation as to what should be the law if we raise the age to 14 or 16.

A. I should leave the present provision as it stands.

Q. Would you make the offence compoundable?

A. Certainly not. In the case of a girl below 14 I would not make it compoundable.

Q. You advocate a system of registration of marriages. Who should be the authority to register these marriages?

A. I am not able to say. I have not considered the point and I do not know what are the possible alternatives.

Oral Evidence of Dr. (Mrs.) TARABAI, Medical Practitioner, Karachi.

(Karachi, the 4th October 1928).

Chairman: How long have you been practising here?

A. For the last 5 years.

Q. Did you practise anywhere else?

A. No. Out of those 5 years I was abroad to Dublin for 10 months for the degree of L. M.

Q. Were you in Bombay college?

A. I was in Poona B. J. Medical School but I passed L. C. R. S. from Bombay.

Q. Since then you have practised here?

A. Yes. I was in charge of the Karachi maternity home as an honorary lady doctor for 2 years. Besides my private practice I was also attending a maternity home.

Q. You deal with cases of females—Hindus and Mohamedans?

A. Yes and especially maternity cases because I have got my own maternity home.

Q. How long have you done that?

A. For the last 3½ years.

Q. Can you tell us from your experience of these maternity homes if you have seen girl mothers of 13, 14 or 15 years?

A. I have seen them but I cannot give you the percentage or exact number.

Q. You think you get many cases of girl mothers of 13, 14 or 15.

A. They were several.

Q. Within the last 10 months how many cases you think you had of girl mothers below 13 or 14?

A. Below 13 I do not remember to have had maternity cases and between 14 and 15 they were about 10.

Q. Would it be about the same number each year?

A. I cannot tell you.

Q. In these cases of girl mothers of up to 15 do you notice that the mother or the child suffers in any way?

A. Yes. So far as I can remember I had two or three typical cases. There was a girl of 13 or 13½. She gave birth to a child and it was a still born child on account of difficult labour. She was in labour for 3 days. Next year again she got pregnant and again she had a still born child. Then 3rd year when she became pregnant she was very anaemic and developed T. B. I was treating her all through.

Q. Was second labour also difficult?

A. Yes, and the third time she was pregnant she was suffering from anemia and eventually developed T. B.

Q. What about the 3rd child?

A. She gave birth to a child; it was very little, puny but it died after 3 months.

Q. Do you think it was the result of mother being quite young?

A. She was of small stature also. The first time when she came she was 13½ years. In another case at the time of second pregnancy the girl was 16 years and at the time of third pregnancy she suffered from osteo-malacia and it resulted in caesarean section on account of osteo-malacia trouble that she had.

Q. What was the spacing between these deliveries?

A. When she was 16 she had 2 children.

Q. What about her children?

A. They were not very healthy.

Q. Were these cases of Hindus or Mohamedans?

A. Hindu.

Q. How long ago did you notice this 13 years girl?

A. That was in 1925 and the second case that I have mentioned was year before last.

Q. Any more cases?

A. There is another; she was about 16½ years, she had difficult labour. Here dais practice has been too much prevalent. She was handled by a dai and as she was not very strong the labour was very difficult and she got septic and afterwards I was called in but she died.

Q. Was that her first pregnancy?

A. Yes.

Q. Any more?

A. I cannot think of any more typical cases.

Q. Do you think that you can attribute certain diseases with regard to women to early consummation?

A. The ultimate result as I have seen is on account of early consummation because the birth of a child early quite naturally leads to some disorder of the womb or lung disease or general debility.

Q. Can you tell us of any early consummation cases of mothers whose children have suffered?

A. I had a case from Bombay. All her three children were ricketty. The third one was suffering from cretinism.

Q. Was that a case of early consummation?

A. Yes.

Q. At what age.

A. I think that lady was about 20 years of age and up to that time she had 3 children. The second child specially was very weak; even when he was 4 years of age he was not able to talk or walk.

Q. And the third one?

A. He was deformed, had such a big head and a big belly.

Q. Do you think that they are more prone to disease on account of early consummation?

A. I would be able to say that. When the mother herself suffers naturally the child which is growing in her womb will be suffering.

Q. Have any cases come to your notice in which owing to early consummation the girls were injured severely?

A. I had one or two cases about a year ago before I went to Europe. The mother-in-law brought the girl to me, and told me that she is looking too big but has not attained puberty and she has been living with her husband for 1½ years. The age of the girl was only 12½ years.

Q. What caste was that?

A. I could not tell you exactly but I think she was Bhagnari.

Q. Any other similar cases?

A. Yes there was another case. The mother-in-law said that she does not allow her husband and begins to weep. I examined the girl but there was no particular injury of a serious nature.

Mrs. Bendon: Do you think that these cases are very frequent in Kurachi?

A. In certain communities it is.

Q. Have you heard of any of them coming to court?

A. I have not heard of any at all.

Q. Is it because they do not know the law or what is the reason?

A. Because it is the custom of the community and they tolerate it.

Q. Even when the girl is injured?

A. Yes.

Q. In what community do you say you found early consummation?

A. Bhagnaris.

Q. Do you find venereal disease is common among your patients?

A. It is not very common.

Q. How many cases do they have in a year in the maternity home on account of ordinary labour?

A. I cannot tell you exactly.

Mr. Bhargava: Can you give any approximate or rough idea of the percentage of such cases which you have just mentioned in which maternity came at the age of 14 or 15?

A. No, I cannot give you any idea; I have not got records.

Mr. Mitra: Will you kindly tell us what is the age of menstruation in this part of the country?

A. In Sind it is about 13 but among the Punjabis it is 15. I have just had a case and she attained her puberty at 15.

Q. What period you think should elapse before first menstruation and consummation?

A. I think 4 or 5 years should elapse before the girl is sent to her husband.

Q. According to your personal view what should be the age for consummation?

1. Fifteen or 16.

Mr. Moulvi: Is there any connection between the spread of venereal disease and early consummation of marriage?

1. I do not think so.

Mr. Kadir: Do you practise among Mohamedans also?

1. Yes.

Q. Is early marriage and early consummation common among Mohamedans?

1. I have not heard of any case. I found Mohamedan ladies robust and strong. On account of this purdah system they look pale but they have a good constitution.

Q. May that be due to late consummation of marriage?

1. Yes. The children are also stronger and healthier.

Mrs. Bader: Do you think that early maternity saps the mothers vitality more than late maternity?

1. Yes. Naturally when the mother is not developed physically and if she has children it would put a strain on her and retard her growth.

Q. Do you think early consummation retards growth?

1. Yes.

Q. Have you noticed any cases?

1. Yes.

Mr. Karbala Lal: There is a complaint that the law relating to the age of consent in marital cases is not observed and cases are not brought to light. Would medical men and women when they come across these cases be willing to report them to the proper authority?

1. Yes. If they are required to do it. As when the municipality sends a circular that any infectious disease cases should be reported and if we do not do it, we are liable to be taken to task.

Written Statement, dated the 4th October 1928, of Mr. HIRALAL NARAYANJI GANATRA, Karachi.

1. No, there is no dissatisfaction.

2. The circumstances which, in my opinion, justify an advance on the present law are that early marriages, which are now prevalent among orthodox Hindus, tend to weaken the development of female organs, and invariably result in miscarriage and giving birth to stillborn or weak infants, and often lead to the females concerned being victims of consumption, hysteria and such other diseases.

3. Yes, crimes of seduction or rape are frequent, but such cases are not so frequently reported in the Press, and complaints are seldom lodged in the Courts of Law due to the impression on the minds of high-caste Hindus that their moral reputation in society will be affected by resorting to such a course. Not only that, but parents of girls fight shy of bringing such cases to light, as they would mean extra trouble to them in securing suitable boys to enter into matrimonial relations with their daughters.

4. No, the amendment of 1925 raising the age of consent within the marital age to 13 years has not been sufficiently effective in protecting married girls against cohabitation with husbands, as this age limit is insufficient to permit of proper development of female organs. As in several Hindu communities, especially Gujratis, consummation takes place almost immediately after the marital ceremony. I am of opinion that the marital age limit should be increased to 15 at the least.

5. The age at which girls generally attain puberty is 14, but it depends on the constitution and the social circumstances in which the

6. Cohabitation is common among orthodox Hindus even before puberty, but among Hindus of somewhat advanced views this takes place soon after puberty.

7. Yes, this is the orthodox Hindu belief based on a Shloka of "Parasher Shigrabodha" to the effect that if parents do not get their daughter aged 10 married and the girl attains puberty, the parents and the elder brother of the girl on seeing her go to hell. But, on the other hand, the rational point of view is presented by Mann, the well-known lawgiver of the Hindus, who definitely lays down that the marital ceremony should be performed after a lapso of three years from the date of attaining puberty. Moreover, the ancient Aynurvedic Scholar named Dhauvantri in his well-known book "Sushroot" says that it is *after the age of 16*, when girls have attained puberty and strong physique, that they can procreate healthy children.

8. No, such a ceremony is not common.

9. No, the attainment of puberty cannot be considered a sufficient indication of physical maturity to justify consummation of marriage, as it only indicates the beginning of the development of female organs. In my opinion, two years after puberty a girl's physical development can be considered to be enough to justify such consummation without injury to her own health and that of her progeny.

10. In my opinion a girl in India can be considered competent to give an intelligent consent to cohabitation with a due realisation of consequences at the age of 15 to 16 years.

11. Several cases have been reported in which cohabitation before puberty, or after puberty but before full physical development of girls, has resulted in injury to her health or body or prejudicially affected her progeny.

12. Yes, I consider the early consummation and early maternity responsible for high maternal and infantile mortality.

13. Yes, there has been development of public opinion in favour of an extension of the age of consent. This is not yet general, but is confined to people of cultured views, who have realised the evils of early marriage.

14. Women in this part of the country used to favour early consummation of marriage for their children, but the evil effects of early marriages are now being realised by them, and in consequence they are gradually becoming averse to such a practice.

15. Yes, difficulties have been experienced in some cases in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code. I suggest that Birth Registers should be properly maintained either by the Municipality or by the Government, and midwives and medical practitioners (whoever may be attending maternity cases) be asked to furnish full particulars to the Registrar concerned. However, in the absence of a proper Birth Certificate, age may be determined by having recourse to a Vaccination Certificate or a School Certificate. I further suggest that as an aid to the identity and verification of the girl and her age, the name and age of the child must be properly recorded at the time of vaccination.

16. Yes, the difficulty in determining the age would be materially reduced if the age of consent is raised.

17. Yes, I would separate extra-marital and marital offences into different offences.

18. Yes, I would make a difference in the procedure of trials for offences within and without the marital state. As regards offences within the marital state by a husband I would suggest a fine not exceeding Rs. 2,000 or simple imprisonment not exceeding one year in the case of girls under 15 years of age. As for the offences without the marital state, I would suggest rigorous imprisonment for ten years in the case of girls under 18 years of age.

19. I have no suggestion to make at present.

20. In the present circumstances of the Hindu society, a higher age of consent for marital cases would not be as effective as legislation fixing the minimum age of marriage, and I suggest fixing this minimum at 15.

21. I would not merely depend on the strengthening of the penal law to secure the noble object in view, but I feel the necessity of progress of social reform by means of education and social propaganda simultaneously.

Oral Evidence of Mr. HIRALAL NARAYANJI, Municipal Commissioner, Karachi.

(Karachi, the 4th October 1928).

(Vernacular.)

Chairman: Are you a member of the municipal committee?

A. Yes.

Q. How many members are there?

A. Fifty-four, they are elected from the wards. I have been elected from Ward No. 1, Juria Bazaar which is inhabited by Gujaratis and Sindhis. There are in all 40,000 or 50,000 Gujaratis who also include Katchis and Kathiawaris. I am myself a Gujarati Lohana and a resident of Kathiawar-Joria Jannagar.

Q. At what age do marriages take place among Gujaratis?

A. From 12 to 14.

Q. Is it before puberty or after puberty?

A. It is before puberty. The girls attain puberty at 14.

Q. Does consummation take place soon after marriage?

A. Yes.

Q. Does it take place before 13?

A. Yes. It was the custom amongst us that 2 or 3 years after marriage she was sent to her husband's house but now she goes to her father-in-law's house the very marriage night. This custom has been discontinued since 5 years.

Q. If a girl of 12 is married does consummation take place then at 12?

A. Yes.

Q. Are there many such cases?

A. In 75 per cent. cases consummation takes place soon after marriage. In 40-50 per cent. cases marriage takes place after puberty and in 50-60 per cent. before puberty.

Q. It means that in 75 per cent. cases marriage and consummation takes place before puberty?

A. Yes.

Q. Are you speaking of Karachi or other places in Sind?

A. Gujarati population is in Karachi and Hyderabad.

Q. Is it among the Lohanas or among all communities?

A. It is among all communities. Nagars are included in Brahmans. The percentage may be less among them but there are cases. Some are backward and some are advanced but I am giving percentage as a whole.

Q. On account of early marriage and early consummation are there any evil effects on the mothers and children?

A. Children die early and mostly within six months and those who live are very weak.

Q. If a law is made that before 14 girls should not be married and boys should not be married before 18, will that have any effect?

A. Early marriages will be stopped to a great extent. If social reform societies do propaganda work it will have a good effect. It will be accepted up to 15 or 16. If social reform societies have the support of the law it will do a great good.

Q. Which of the alternatives would you like—the age of marriage or the age of consent?

A. I think both are necessary. For marriage the minimum age should be 15 and for consummation it should be 16 at least. In extra-marital cases the age of consent should be 18 at least.

Mrs. Beadon: Can you give us any cases in which girls suffered or children suffered?

A. Two girls died of maternity recently. The age of girls was below 14.

Q. Did the girls die at the time of delivery or soon after delivery?

A. They died soon after child-birth.

Q. Were these people poor and unable to afford good nourishment?

A. No they are rich. The girl does not die on account of poverty but it is due to early marriage.

Q. Does she get proper medical aid?

A. Yes, there are municipal maternity homes and they can get proper treatment.

Q. Can you give us what ill effects are produced on the mother and the child before 14?

A. The girl is weak and the child is very weak and has very little power of resistance. I have no experience of other communities.

Mrs. Nehru: Does early consummation still continue or has the age at which consummation takes place increased during the last 5 or 6 years?

A. Yes, on account of education the public are now in favour of a rise. I am speaking about Gujrat.

Q. You say Goan ceremony is being given up by people now. Why is it so?

A. Gujrat girls are married in Bombay and other places which are far off. The girl has to be sent immediately to the husband. Goan ceremony is almost ignored.

Q. What is the proportion of girls to boys in Gujrat?

A. It is equal.

Q. Why is it that inspite of the mothers being in favour of late marriages early marriages take place?

A. The age is being enhanced now. At the conference which took place some 10 years back, the age was fixed at 12 years. It is being increased now. But the orthodox people are still backward and in the majority of cases marriages take place before puberty.

Q. Can you suggest any improvement in the registration of births?

A. In many cases there is no registration. There must be some punishment for failure to report.

Q. How can you compel the people to make a report?

A. These panchayats must be required by law to keep these registers. If they don't keep the register they must be fined. The work should be given to panchayats and not to municipalities.

Q. Why do you say that a distinction should be drawn between intra-marital and extra-marital cases?

A. In the case of marital offences it is only a technical offence. In the case of extra-marital cases the offence is a heinous offence. There must be difference in punishment and procedure.

Q. What change do you want in procedure?

A. Investigation must be carried on by a responsible officer.

Q. To whom should the right of complaint be given?

A. The girl and her relations.

Q. Do you think cases will be reported then?

A. Some cases will be reported.

Q. The law of 1925 is altogether inoperative and unknown, according to you. If it were known do you think it would be followed?

A. Some people will follow it.

Q. Besides the ignorance of the existence of law are there any other reasons for its being ineffective?

A. Lack of education is another cause.

Q. You say seduction and rape cases are very common in your part of the country.

A. Yes, girls are brought from Gujrat to Sindh. They are meant for sale. It is a regular business with some.

Q. Have you seen any case personally?

A. No.

Q. What is generally the age of the girl seduced?

A. It varies from 13 to 18.

Q. What age of consent do you recommend?

A. Sixteen.

Q. And for marriage?

A. Fifteen.

Mr. Bhargava: You have said you have seen 6 or 7 cases of early motherhood. What is the age generally?

A. Between 13 and 14.

Q. What is the age of the boy?

A. The boy is generally 5 years older.

Q. Does the custom of widow remarriage exist in your parts?

A. In Lohana community to which I belong the custom exists, but not among Brahmins.

Q. In those communities where widow remarriage exists the age of the boy must generally be high.

A. Yes.

Q. Are there any cases of 40?

A. No, not so high.

Q. Should there be any law fixing the age of the boy also?

A. Yes.

Q. Don't you think there will be great harm in giving birth registration to panchayats?

A. No.

Q. Does the religious belief that a girl must be married on the appearance of first signs of puberty still exist?

A. Yes, it exists. 25 per cent. still consider it a sin.

Q. If we fix the same age for marriage and consummation do you think it will be proper?

A. They should be separate. It should be 15 for marriage and 16 for consummation.

Mr. Mudaliyar: You said 60 per cent. of the people marry their girls at 11 or 12, i.e., before puberty and send them immediately to the house of the husband.

Q. You think cohabitation takes place immediately they are sent and the girls have no protection under their mothers-in-law.

A. On the following day it takes place.

Q. Is it preceded by a ceremony?

A. No particular ceremony takes place.

Q. If about 60 per cent. of the cases are pre-puberty marriages and out of them in 75 per cent. cohabitation takes place before puberty do you think that your community will be agreeable to fix the marriageable age at 15?

A. Yes. They require the protection of law. They can say they are prohibited by law to marry. Those who are of advanced views will agree.

Q. Is it due to any religious injunction or is it merely due to custom that this consummation takes place early?

A. It is due to custom.

Q. Why do you fix the marriage age at 15 and the age for consummation at 16?

A. To give chance for development.

Q. Why don't you have a big jump then and fix the age at 16?

A. There will be opposition.

Q. Do you think there is any serious difference between 15 and 16?

A. The age should be raised gradually.

Mr. Kadri: If you fix the age at 16 is there no danger of the girls becoming immoral? Don't you know of a case in Junagad where a Mahant outraged the modesty of a very young girl?

A. Those are exceptional cases.

Q. It has been pointed out that if you award very high punishment in marital offences there is a danger of estrangement between the husband and the wife and her life being ruined.

A. The punishment should depend upon the merits of the case.

Mr. Kanhaiya Lal: What is the population of the Lohana community in Karachi?

A. About 20,000. We established here about 75 years ago.

Q. You will give the right of complaint to panchayats.

A. Yes.

Q. Can you suggest any other way of making the law effective?

A. I think the panchayat system is the only remedy.

Q. Are you in favour of registration of marriages giving all details regarding the couple?

A. In the Lohana community a record is still kept. A tax has to be paid in this community. The custom is this. Three days before the marriage about 20 people go to the house of the girl and a Brahmin accompanies them. A Lagan Patrika is then recited. The particulars regarding the couple and their fathers are given. The age is not given.

Q. Would you like that the age also should be given?

A. Yes.

Q. Can the work of registering marriages be given to the Tahsildar or some officer of the police?

A. It will be a great trouble. The people are afraid of the police. There must be a panchayat and it must keep a register of marriages in which the age should also be given.

Q. If a girl can give an intelligent consent at 15 why do you fix the age at 18 in extra-marital cases?

A. Sometimes it is obtained by threat.

Q. But then the man can be punished otherwise and more severely.

A. One other reason is that the girl is more fully developed at that age.

Oral Evidence of Mrs. TYABJI, Karachi.

(Karachi, 29. October 1928.)

Chairman: Are you connected with any reform associations or social reform movement among Mohammedans?

A. No, there is no association in Karachi.

Q. Do you come in contact with many Mohammedan and Hindu ladies?

A. I am looking after the school teachers and I come in contact with them and some of them are heads of communities.

Q. What do you think is the prevailing opinion of Mohammedans about marriageable age?

A. As far as I can make out they are all for increasing the age up to 16. When we had the education conference of ladies in December last they had this question whether the age should be left at 14 or raised. They all wanted to raise it to 16.

Q. Did they go into the question of ultra-marital relations? Did they support Sardar's Bill?

A. Yes, they decided that age of consent should be 16 for marriage and 18 for ultra-marital relations. This was passed in the form of a resolution.

Q. What is the marriageable age among Mohammedans in this part of the country?

A. I know very little but so far as I know it is very high. It is higher in Bombay, sometimes it is as much as 32. Very seldom it is 16 to 18.

Q. Do you know of any cases below 14?

A. No.

Q. Have you noticed any evil effects of early motherhood that is to say below 15 amongst Hindus of your acquaintance?

A. I do not know much about Sind but in Hyderabad Deccan amongst Hindus and Mohammedans they marry very early and the majority is very great. This is among the lower classes.

Q. Do higher classes not marry early?

A. No.

Q. What is the kind of results that you notice?

A. The children have rickets, they are not properly developed, there is great difficulty in teething and very often they die. Many mothers get consumption. It is very prevalent among classes who marry very early.

Mrs. Beadon: By early consummation you mean at 10 or 11.

A. Among the Komtis they marry at a very low age. They are a very wealthy class and at the same time very orthodox. They marry very young and practically the girl is brought to the husband's house after marriage.

Q. Have you in your personal knowledge seen any cases in which there was early consummation?

A. The girls die early.

Q. Have you heard of any particular case of death due to child-birth among these early mothers?

A. Very often they die of child-birth. I have seen many cases.

Q. Could you give us one or two instances?

A. No.

Mrs. Nehru : When you say that amongst those Komtis in Hyderabad: consummation of marriage takes place at the age of 9 or 10 do you say it from personal knowledge?

A. I have seen a few cases.

Q. Were they Komtis?

A. Yes. You can find out from the hospital.

Q. Have you seen these cases actually with your own eyes?

A. I have known of cases. I have seen the condition of the girls.

Q. Did they give birth to children?

A. No they came to the hospital.

Q. Have you seen just one or two cases or more?

A. More.

Q. Have you been long here?

A. Two years.

Q. What is the condition of the education of women in your community?

A. Among the Mohamedans they are not very well educated. They do send their girls to the municipal schools but not above 14.

Q. What is the reason of their not going to school after 14?

A. Because of purdah.

Q. Are there high schools for girls?

A. No. There is one school which is doing splendid work that is Haji Abdullah Haroon's where I have seen girls taking education.

Q. How many girls are there altogether?

A. Three hundred.

Q. How long has it been in existence?

A. Three or 4 years.

Q. Have you heard of any religious injunction amongst the Mohamedans against the fixing of the age of consent at a certain age?

A. No.

Q. Any feeling among the people?

A. No.

Q. Not even among Mohamedans?

A. I have not come across anybody objecting to the raising of the age of consent.

Q. Orthodox people?

A. I know some of the orthodox people in the Hindu community but the women have very advanced views and they do not object to the raising of the age of consent.

Q. Do they generally prefer fixing the age of marriage or raising the age of consent? Which of the two alternatives would you suggest and which you think will be more in consonance with public opinion?

A. I would have the fixing of the marriageable age. People will prefer it and that is the prevailing idea among the ladies because they all agreed in the conference.

Q. Were they all educated?

A. Not all.

Q. Both Hindus and Mohamedans agreed?

A. Yes.

Q. Can you tell us what are the reasons which have so far made this law ineffective? Have you heard any complaints from anybody about the provisions of this law?

A. No.

Q. Do you think the law about the age of consent is known here?

A. No.

Mr. Bhargava : Do you know anything about rural areas of Sind?

A. No.

Q. So far as this Komtis are concerned is there any prevailing idea that the girls should be married at the age of 11? Is there any such movement in Hyderabad Deccan?

A. Yes. There the conditions have got much better since the last 3 years.

Q. You think this age of 16 will be acceptable to those people also?

A. Yes.

Mr. Mudaliyar : Where was this ladies conference held?

A. At Karachi.

Q. Of these 400 ladies that attended did any come from the mofussil?

A. Not many, a few delegates came.

Q. Were they Hindus?

A. All the delegates were Hindus.

Q. How many were from Karachi and how many from outlying districts?

A. Some delegates were from Larkana—about 6 or 7—and the rest were from Karachi.

Q. And out of these 6 or 7 were there any educated ladies?

A. Yes.

Q. So far as this conference is concerned it would be correct to say that it represented the opinion of the educated ladies and such of the uneducated ladies as are in Karachi city?

A. Yes. These ladies who came as delegates had held conferences in their own parts and came with the opinion of those ladies.

Q. I take it that the age of consent within marital relations was not discussed?

A. It was discussed.

Q. Were separate resolutions about the age of marriage and the age of consent within marriage passed?

A. Yes.

Q. Apart from this conference have you come across other ladies who are not generally taking any interest in such matters?

A. Yes among the teachers.

Q. Municipal teachers are not very highly educated people?

A. I do not come in contact with other people.

Mr. Kadri : Are you on the Karachi School Board?

A. Yes.

Q. You are in touch with primary schools?

A. Yes.

Q. Teachers employed in these schools belong to all communities?

A. Yes.

Q. Do you think there is a consensus of opinion among them that the age should be raised?

A. Yes.

Mr. Kanhaiya Lal : You recommend that the age of consummation of marriage in marital cases may be raised to 16. There is already a complaint that even with the age of 13 cases are not brought to light. Can you suggest any measures for making the law more effective or bringing cases to light?

A. I have heard of its being done in Limbdi State. They have made it absolutely necessary for the persons concerned to obtain a license for marriage before they can marry.

Q. Would you recommend a similar measure for British India?

A. Yes.

Q. Will it work satisfactorily in a large country like India?

A. When it is working there why it should not work here.

Q. If a committee is to be appointed by some executive authority to give permission before the marriage can be celebrated, do you not think that with a large population like that we have in British India we shall require a very large number of committees in each District, and the work will be immense?

A. I cannot say.

Q. Do you think women's organisations like the one you have in Karachi will be able to help in the matter of bringing cases of breach to the notice of the proper authorities?

A. To a certain extent.

Q. Do you think such societies can be organised in urban and rural areas?

A. I cannot say.

Written Statements of persons not orally examined.

Written Statement, dated the 8th August 1928, of Khan Bahadur A. M. I. UMEDALLY, President, District Local Board, Hyderabad.

1. Yes.

2. The following circumstances justify in my opinion an advance on the present law:—

(1) The present Age of Consent is too early for intelligent consent being given by girls because in nine cases out of ten they hardly realize the consequences of their consent.

(2) The present early Age of Consent results in the withdrawal of girls from schools before they have received a fair standard of education, and

(3) The present early Age of Consent is responsible for high maternal and infantile mortality.

3. Yes.

No. I would suggest that the Age of Consent be still raised to 18 years.

4. No. I would suggest that the Age of Consent be raised to 16 years.

5. 14 years. No.

6—8. No.

9. No. In my opinion at the age of 18 and 4 years after puberty a girl's physical development may be considered to be enough to justify consummation without injury to her own health and that of her progeny.

10. At the age of 18.

11. No.

12. Yes.

13. Yes. It is general.

14. No.

15. Yes. I would suggest that evidence as regards age by officers of the Indian Medical Service or Women's Medical Service alone should be admissible in courts and that courts should be at liberty to disregard that evidence if it is manifestly wrong.

16. Yes.

17. Yes. Same as at present except that in the case of rape by a man with his wife below the prescribed age, I should like that the punishment should be reduced to imprisonment of either description for two years and fine.

18. I would make offences within the marital state non-cognizable, bailable and triable by a Presidency Magistrate or a Magistrate of the first class while those without the marital state cognizable, non-bailable and triable by a court of session.

19. None.

20. I consider that penal legislation fixing the minimum age of marriage on the lines of Mr. Sarda's Bill would be equally effective as the penal legislation fixing a higher Age of Consent for marital cases. Both.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view.

Written Statement, dated the 8th August 1928, of Mr. THAKURDAS NARAINDAS, B.A., LL.B., First Class Sub-Judge and Assistant Sessions Judge, Sukkur.

1. Yes, amongst the intelligentsia of the country.

2. The circumstances meriting an advance on the present law are:—

- (i) a vehement expression of medical opinion against early sexual relationship,
- (ii) a stout growth of public opinion that early carnality has a deleterious influence on the physical, moral and social existence and development of the people and their offspring,
- (iii) a similar, nay a more anxious conviction on the mind of the enlightened females of the country,
- (iv) rampancy of abduction and seduction cases in the land.

3. Yes, though seduction is more frequent. The amendment of 1925 has succeeded in reducing cases of rape outside the marital state and the improper seduction of girls for immoral purposes under the age limit; but trafficking in females over that age has increased and that is one of the reasons why the Age of Consent should be raised.

4. (i—iii) Yes, to a certain extent.

5. At about 14, mostly in all castes and communities in Sind.

6. (i) No.

(ii) Yes.

(iii) No. It is rarely that any such case comes to court. I know of one such instance at Karachi in which the husband was prosecuted a short time back, and his defence was ignorance of law.

7. (i) No.

8. (i) No.

(ii—iii) Do not arise.

9. (i) No.

(ii) No, inflexible rule can be prescribed but generally speaking, consummation one year after attainment of puberty would be a salutary course.

10. About sixteen.

11. Yes, I have come across numerous cases in which premature or early consummation has resulted in serious consequences to the female.

I give below a few cases of details of age and injury sustained:—

Age	Nature of injury.
(1) 13 years	Death in first child-birth.
(2) 16 years	T. B.
(3) 14 years	Death in first child-birth.
(4) 13 years	Deformed and stunted growth and ultimately, death in second child-birth.

12. Yes, early consummation and early maternity are responsible for several physical ills and intellectual morbidness. "Mens sana in corpore sano" is an unassailable maxim and unless the corpus of the nation is healthy and vigorous intellectual deterioration and ultimate decay are bound to accrue.

13. Yes, mostly amongst the enlightened portion of the community. Even the orthodox section is veering round to that view.

14. No.

15. Very rarely.

16. Does not arise.

17. No. The existing provisions of law are adequate to meet the two cases.

18—20. No. Both legislations are necessary. The former would only attack the flank of the evil but the latter would charge the centre. The conservative section of the community is disinclined to favour legislation fixing the minimum Age of Consent.

21. Education and social propaganda appeal only to the superior section of the community but legislation is always universally effective and but for the flimsy semblance of religious cloak, for which there is little authentic authority, even the orthodox section will have no argument against extending the Age of Consent.

Written Statement, dated the 10th August 1928, of Khan Bahadur SHEIKH YAKUB WAZIR MAHOMED, M.B.E., J.P., B.A., Collector of Nawabshah.

1. There is no dissatisfaction in Sind with the existing state of the law as to the Age of Consent as the advanced classes protect their children by resorting to marriages late in the day and the backward or illiterate classes have no conception of the present limitations.

2. (1) If Mr. Sarda's Bill regarding fixing of ages of girls for marriages is passed, then there seems no necessity for the new section 376-A, nor for the amendment of sections 375 and 376, Indian Penal Code. The present raised age-limit in cases of offences under sections 372 and 373, Indian Penal Code, would be helpful in governing many cases of girls not covered by marriages. Besides these, there should be very few other offences of the kind and no special legislation is necessary therefor.

(2) If Mr. Sarda's Bill is not passed it is absolutely necessary to make an advance on the present law by legislating amendments as per Sir Hari Singh Gour's Bill. Such necessity is obvious in order to give young girls time to equip themselves in education, domestic duties and in development of their physique, before they waste their vitality for sexual intercourse and results occurring in its train. The present age-limit of 13 years for "Consent" is indeed so low that girls at that age hardly realize the effects caused by such "Consent" and sexual intercourse at or before that age is productive of grievous suffering and permanent injury to child-wives and of physical deterioration in the community to which they belong.

3. No. There are no materials for forming a definite opinion in this behalf as all such cases do not come to light. Only one such case was dealt with after the amendment of 1925 in each of the two years 1926 and 1927. Prior to that there were about 2 cases per year on an average.

4. (1—3) Yes, though there are no reliable data for such inferences. The present feeling generally is against child-marriages and the old religious dogmas enjoining marriages of girls before 10 years are hardly respected in the present times except with orthodox clans, etc.

5. The usual age at which girls attain puberty, i.e., have menstruation courses, is about 13 but this cannot be counted as full-fledged puberty rendering girls fit for consummation. The latter stage is reached at about 16 years. This does not differ in different castes or communities but the difference does occur with constitution and circumstances of girls. For instance, strong and well-nourished girls attain puberty somewhat earlier than their sisters in ordinary environments.

6. No. It has no connection with any class or classes of people but is common to some persons of all classes who are vitally strong and are ignorant of the consequences of their acts. Cases of cohabitation (1) before puberty, are rare and confined to such persons as are given to animal passions. Cases (2) and (3) are common, the prevalent idea being that such cohabitations are legitimate and harmless. Some cases of such type do come to Courts but generally they do not, as such disclosures in public courts are avoided by all classes of people as far as possible.

7. Not in all cases. I think such religious injunctions are confined to Hindus only, *vide* Mann Smriti and Shreeghra Bodh. These direct that girls must be married by parents between 8 to 10 years, if not father, mother and eldest brother will be sinners and such punished by God. But in these days there is hardly any real respect for such religious injunctions and they are carried out by some sections more on account of social inconveniences than otherwise. For instance, Bhutias in Sind have child-marrriages owing to the paucity of sufficient number of girls in their fold but they sanctify such early connections by the mandates of religion. Public opinion as regards religious injunctions was quite different in the past and was at a high pitch when age of 12 years was substituted by Criminal Law Amendment Act of 1891. Then there was acrimonious discussion which created a widespread ferment on the ground that the provisions of the amendment were opposed to the dictates of Hindu religion. No such feeling is traceable in Sind now.

The Mann Smriti does prescribe penalty for disregarding religious injunction in this behalf and it makes parents and eldest brother sinners and creates a superstition that the offenders would be punished by God in the same way as a cow-slaughterer. But in the present time, no seriousness attaches to such penalties.

8. Not known in this country.

9. No. I believe 16 is the age at which physical development should be considered to be enough to justify consummation without injury to the health of the mother or her progeny. At or after that age a woman can well stand the strain of pregnancy and other consequences attending therefrom.

10. Not less than 16 in any case. Girls below 16 years can hardly give an "intelligent consent to cohabitation" as they cannot understand the consequences caused by such "Consent". Cases have occurred where young girls allowed themselves to be victimised owing to overtures of dupes and thus completely ruined their lives and caused dishonour to their families.

11. I have heard of several cases in which girls between 11 and 13 years resorted to cohabitations either with their husbands or with strangers and they suffered by rupture of Perimenn, tears in the vagina, tearing of cervix or in extreme cases by rupture of uterus (womb). Such premature cohabitations have resulted in occasional deaths and delivery of still-born children and so on.

12. Yes. Besides the injuries to the females and their progeny may be so serious as may cause deterioration of a race morally, physically and intellectually.

13. Yes, it appears general enough, though it is most visible among literate classes.

14. They do not favour early consummation but they favour early marriages as they are always anxious to see their daughters disposed of as early as possible.

15. There have been innumerable such difficulties as all classes and communities do not maintain records of dates of births. Hindus have horoscopes and other communities generally depend on registers of births and deaths maintained by Government and Municipalities. But when contested criminal cases occur, such records either disappear or are tampered with. Then the Court has no other alternative but to depend on medical evidence which is not always reliable and consistent. Recently process of "Osification" has

been introduced by medical authorities to determine age according to bone formations. This is more satisfactory than others, though not perfect. I cannot suggest any other measures to remove or minimise difficulties on this subject.

16. Yes, to an extent, as a girl more advanced in years should be easier subject for age determination in ordinary cases.

17. Yes, because marital offences are less serious than non-marital offences, the enormity of the latter being due to defilement and dishonour reflected not only on the girl but also on her whole family. Moreover non-marital offences cause feelings of retaliation and revenge ending in murders and bloodshed. The sentences as now proposed in sections 376 and 376A for non-marital and marital offences, appear suitable for adoption.

18. Yes. Marital offences should be non-cognizable by Police and such complaints should not be accepted except when lodged by the wife herself or her parents or other lawful guardians. Such offences should be compoundable with the permission of the Court. For non-marital offences the present procedure is alright.

19. No.

20. No, *vide* 2 (1), *supra*. The public opinion as regards Hindus favours Mr. Sarda's Bill, *vide* resolution in the last Hindu Sammelan or Conference held in June last at Hyderabad, Sind. The opinion of other communities cannot be gauged as there has been no public occasion for eliciting it.

21. On both. The necessary law must be enacted to secure the object in view and its utility will diminish with the progress of social reform which will take very long to bring about the necessary changes. The fear of Law Courts would cause reformation invisibly and permanently.

Written Statement, dated the 11th August 1928, of Mr. DIALMAL DAULATRAM, B.A., LL.B., Sessions Judge, Larkana.

With reference to your letter No. 43-A. C. C., dated 26th ultimo, I have the honour to state as follows:—

1. There is dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376, Indian Penal Code.

2. These offences come under the Chapter XVI relating to offences against the human body as distinguished from those relating to property. They form a sub-head by themselves. They are, however, co-related to other sections in the same chapter relating to kidnapping minors, section 361, and selling minors for purpose of prostitution, section 372, and buying minors for the same purpose, section 373. Under the first section the age of a minor female is fixed at 16 years while under the last two sections it is fixed at 18. The sections 372 and 373 were amended in 1924. The reason of the amendment was the protection needed by girls from a life of prostitution. Under section 376, if a girl of 14 consents to cohabitation, no offence is said to be committed. But a girl at that age can hardly be said to have developed that understanding duly to realize the consequences of her act. Public opinion has advanced in that direction and is not satisfied with the state of the penal law as it exists at present. That is partly due to the advance the education of women has made in the country, and even they are dissatisfied with the present law.

3. So far as my experience of the masses goes, crimes of seduction and rape are common in my part of the country. The disease is prevalent among Mussalmans in a marked degree. All cases, however, do not come to Courts or even see the light of the day—only a small proportion is reported to the police or brought directly to Courts. The majority of such cases are settled outside Courts through the influence of local zamindars.

The amendment of the law in 1925 has had very little effect in preventing or reducing cases of rape outside the marital state, not being adequate. I favour the proposal to raise the Age of Consent to 16 years. I would prefer that the Age of Consent be fixed at 18, in cases outside marital state, to be really effective. Even at 16, a girl is immature in intelligently realizing the consequences of cohabitation.

4. The amendment of 1925 has, I am afraid, not been effective in protecting married girls against cohabitation with husbands within prescribed age-limits, although such cases do not usually come to light. The instances of such young girls being mothers very early are not uncommon. Nor has the amendment had the effect of postponing marriages, beyond 13. The more effective kind of remedy is that proposed by Mr. Sarda's Bill, but the law should go far beyond his lukewarm measure. The marriageable age should be 16 and 20 for girls and boys respectively.

5. In Sind the average age of puberty for girls and boys is 14 and 18 respectively. That is true generally of all classes of people living here. I do not take note of cases where puberty is arrived at earlier owing to the affluent circumstances of the few.

6. Marriages before puberty are common both among Hindus and Mahomedans. Unequal marriages are more common among Mussulmans who claim their cousins as of right. The age of the husband as compared with that of the girl is no obstacle. A case of a minor girl being so claimed by the husband of her deceased sister came before me only so late as June 1928. The husband was over 42 while the girl was about 13, and the allegation was that the husband had and desired to have cohabitation with the girl-wife, and order restraining him was obtained and the girl separated from him. It was claimed by the husband that she had attained puberty. In similar cases cohabitation is common soon after puberty among Mussalmans. It is more common in case of Hindus. A case of rape on a Hindu girl of about 13 by a neighbour, came before me in 1927 when the girl admitted in her deposition before the Committing Magistrate, that her husband had had cohabitation with her for a period which brought him within the section 376. In the Sessions Court she denied it and for obvious reasons. Few cases of Hindus, guilty of such acts, as mentioned above, come to light.

7. So far as I am aware and so far as this sub-province is concerned, no religious injunction exists to compel early consummation of marriage.

8. Garbhadan ceremony is not performed in this part of the country in any community except among some Brahmans. It takes place often before consummation of marriage and sometimes coincides with it. Among Mussulmans it takes the form of "Mathamel" which in case of mature girls takes place at the same time as Nikah or immediately thereafter.

9. I do not think attainment of puberty is a sufficient indication of the physical maturity to justify consummation of marriage. I am humbly of the opinion that no marriage may be consummated, as a general rule, before 16 in case of girls and before 20 in case of boys. I am decidedly of the opinion that consummation before such ages is detrimental to the health of the parents and does not conduce to healthy and vigorous progeny.

10. I doubt whether a girl in India is competent even at 16 to give an intelligent consent to cohabitation with a *due realization of consequences*. I would put such age at 18.

11. Several cases have come to my notice of undeveloped girl-mothers and physically poor progeny although in two of such cases—both within the circle of my acquaintance—their husbands were physically fit and were over 20 years of age.

In both the cases the girls were 14 years of age. In one case the first child was born after great trouble and died soon after. In the other case the wife has borne 5 children and all are very sickly. The mothers in both cases have been looking pale and anæmic since the first child-birth.

12. I hold the view that early consummation and early maternity are responsible, to a great extent, for high maternal and infantile mortality. The deterioration or the physique of the people is directly due to such a case.

13. Public opinion has veered to the view that the Age of Consent in both marital and extra-marital cases be extended. The public meetings of both men and women held to support the bill of Sir H. S. Gour testify to that condition of mind. That change is more pronounced among Hindus than among Mahomedans.

14. Ordinarily women (mothers) do not favour early consummation. They realize the difficulties and the hazards of such consummation more than their daughters. Under the existing law, they are helpless because the husband is regarded as the preferential guardian of his wife after maturity. And under the Muslim Law a girl is supposed to have attained puberty at 12.

15. No difficulty is experienced in determining the age of girls in cases which come from towns and big villages where registers of births are maintained. In cases which come from other places, medical evidence is obtained in places where the cases are tried. Such evidence, though often accepted, is not always regarded as conclusive of the question of age. I would venture to suggest that arrangements for registering births may be made more perfect in the mofussil.

16. In the latter class of cases, I do not think the difficulty or margin of error in determining the age will be materially reduced or minimized if the Age of Consent is raised only to 14 years. It would be different if the Age of Consent be fixed at 16. There will be much less difficulty if the age is fixed at 18.

17. I would be in favour of separating marital and extra-marital offences into different offences. The maximum punishment now provided under section 376 for extra-marital offences may be retained, but in the case of marital offences, I would not be satisfied with 2 years proposed, but would fix it at 5 years and make the case triable by the Court of Sessions as at present.

18-19. I am not in favour of making a difference in the procedure of trials in the two cases. Both should be triable by the Court of Sessions, except that the offence within marital state may be made bailable, and the police may not arrest without a warrant. I make the suggestion with a two-fold object. The stringency of the present procedure, as in the case of extra-marital offences, prevents such cases from being dragged into light. At the same time, any leniency in the punishment may be misplaced, and not act as a sufficient deterrent to husbands. In the case of husbands, the provision that the police may not arrest without a warrant would be a sufficient safeguard. To it, may be added a further safeguard requiring the Court to hold a preliminary inquiry before issuing process.

20. I consider legislation of both kinds mentioned in this question to be necessary one being the complement of the other. In this part of the country public opinion would favour both kinds of legislation. Mr. Sarda's Bill as it has emerged from the Select Committee will not give satisfaction. It is a nervous, half-hearted measure. The ages should be put at 16 and 20 the lowest for girls and boys to realize the object the mover has in view, viz., to prevent child-widows and to prevent the physical and moral deterioration of the people. The bill prohibiting early marriages requires to be passed without avoidable delay. That will extend the school-going age of the girls who are denied that education generally after marriage.

In this part of the country there is no binding custom requiring girls to marry before a certain age, although there is a general desire among Hindus to marry them as soon after puberty as possible. In certain classes in Sind girls are given education almost compulsorily. Mr. Sarda's Bill will, however, be very helpful to those classes who are backward with regard to the education of their girls. It will afford opportunities for female education and stimulate public opinion.

21. Progress of social reform by means of education and social propaganda will not effect, as quickly as legislation, the object in view. Social reform

will confirm what the legislation enjoins and smooth the way for the acceptance generally of the legislative measure even in quarters where the public opinion is not yet equally advanced. Education remedy is a tardy one and will not be enough to meet the evil. We may hope for reform not in this generation but in second or third generation if education alone has to be depended upon. Social reform of the last 40 years or since the Age of Consent Bill has not succeeded in eradicating the evil.

22. I am agreeable to being examined orally.

Written Statement, dated the 21st August 1928, of Mr. BANASINGH JETHANAND HINGORANI, Retired First Class Sub-Judge and Assistant Sessions Judge and Special First Class Magistrate, Tharushah, District Nawabshah, Sind.

1—2. My experience is confined to the province of Sind only: therefore the answers are based on that experience. I do not think that there is any real dissatisfaction in the province about the working of sections 375 and 376 of the Indian Penal Code, but it is time that some advance should be made in the national cause by increasing the age of the girl to 14 when she could be said to have given her intelligent consent to the consummation of her marriage with her husband, and to sixteen in the other case. In view of the climatic conditions of the province and other considerations a girl generally attains puberty between 12 and 15, but I think physical capacity or advancement does not coincide with the age of puberty as the latter is often attained not before 14th year. It is, therefore, desirable that the limits should be increased as above. The considerations which weigh with the public in fixing a shorter age in the case of a husband and a wife must be different from those which should apply to cohabitation beyond the marital state. Hence I have submitted above that the limit in such a case should be raised to 16. This will act as a deterrent to evil-minded persons to gratify their passions on innocent girls. Beyond that limit she should be in a position to some extent to prevent such a crime.

3. I do not think that the crimes of rape and seduction are very frequent in educated classes but I am afraid that the case with lower classes is different. This view is based on my personal knowledge and the reports in the press. The amendment made in the law by the act of 1925 has not materially reduced or prevented such crimes. In my opinion the spread of education in the masses, the growing of public opinion and the amendment suggested above will go a great way to ameliorate the conditions now prevailing. Penal laws do not generally prevent the crimes as will be seen from the administration reports about justice. I would, however, strongly urge that every effort should be made in the direction of the education of masses as this is bound to improve the social conditions of the people.

4. It is difficult to say if the amendment of 1925 has postponed the consummation of marriages among the masses as such cases do not, as a rule, come to light specially in the case of the masses. As regards educated classes, marriages often take place after the age of 13 in the case of girls and after 16 in the case of boys. Amongst the former I have found that early marriages do take place, even when a girl is only 5 years of age, but I cannot say if consummation of the marriage in such a case takes place before or after 13. However, if the boy is also of the same age as the girl I think it takes place after 13 while in the case of a grown-up boy it is possible that it may be taking place before 13 but such cases are few and far between and do not see the light of the day on account of the absence of strong public opinion.

5. As I have submitted above, puberty is attained between 12 and 15. Of course in the case of higher families girls attain it earlier than in other cases. Although climatic conditions have a great bearing on the fact, there

are other conditions also which affect the question of puberty, such as the constitution of girls, the general growth and the circumstances of the family of a girl, for instance, poverty which cannot allow any nutritious food to a girl.

6. Cohabitation before puberty is not common in the province. I had to try a case of rape on a girl of 11 about 5 years back but that is rather rare. It is possible after puberty but such cases also must be rare and do not come to court.

7. As I have submitted above early marriages in educated classes are *nil*; they do take place in other classes but that has nothing to do with any religious injunction. It is due partly to paucity of girls and partly to greed.

8. The ceremony known as Gaona is unknown in the province. No other ceremony takes place after the marriage. Therefore other parts of the question do not arise.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. As I have submitted above physical development takes place generally after 14 and before the end of 16. Hence I have suggested above that the age under marital state should be 14. If as is often the case puberty takes place at the age of 12, the margin of 2 years should be enough for development of physical capacity for the purposes of cohabitation.

10. Ordinarily the age of 15 should be the proper age for the purpose indicated in the question, but in my view the increase in the age should be gradual as the public opinion increases gradually. The sudden increase to the maximum limit would upset the society and create discontent.

11. I have stated above that I had to try a case of rape on a girl of 11. She was normally developed but there was no physical injury to the girl though it was committed by a man of 40 as the penetration was not complete. I have not come across with any other case as a judge or privately.

12. I do not think that early consummation or early maternity are entirely responsible for high maternal and infantile mortality. They are responsible to some extent, but there are other cases also which go to affect the mortality, such as midwives, poor circumstances and absence of knowledge about hygiene and the manner of nursing infants. In the mofussil maternity cases are managed by midwives who are ignorant and dirty and often of no character, and therefore irresponsible. Their ways are crude. They think that by the birth of a baby their duties end. When an infant is born under such circumstances there is no wonder if the mortality is high. This, no doubt, partly contributes towards the deficiency of intellectual and physical progress of the people.

13. Only to the extent mentioned above and that too is confined to the educated classes.

14. Emphatic no. It is a calumny on women to say that they are anxious for, or encourage, early consummation of marriages.

15. Yes, in the case mentioned by me above. The girl could not give her age and she also could not be expected to give her proper age. Her father was absent and could not be found. Her relation who attended was not in a position to give it. She was born in a place where births were not registered. Therefore the decision of age was dependent on the medical evidence. I think that registration of births should be compulsory even in mofussil, specially in small places. In a place like Tharushah having 3,000 souls, there is a girls' school where on the admission of a girl her age is noted. There is a pound munshi to whom births are reported and as he is stationary, very little difficulty is experienced in reporting the births. People of higher classes have got horoscopes. It is only in small places, where people do not keep any horoscopes and have no girls' schools or where there is no stationary or permanent officer to register births, that difficulty arises. I would suggest that in mofussil better arrangements may be made for registering the births and

that monthly entries should be submitted to the head office and there again entered in a register to be kept for the purpose and that the monthly entries so entered should be signed by the head of the district office.

16. I do not think that by raising the limit to 14, the difficulty will be minimised. Documentary evidence is much preferable to expert evidence, for in the former case there is greater degree of certainty than in the latter, for development of a body does not depend on age alone.

17. I would like to separate the two, for rape as popularly understood is a strong word and carries a certain amount of infamy with it which should scarcely apply to a case of a husband, but what should the exact word be used in a case of that kind it is difficult at present to say. The sentence provided for a case of rape is sufficiently heavy in either case.

18. So far as offences within marital state are concerned, they should be triable by Chief Presidency Magistrate and District Magistrate and the punishment in the case where sexual intercourse was with a wife under 12 years of age should be seven years, either simple or rigorous and fine. My view is that such cases should ordinarily be tried by the magistrates mentioned to avoid great delay and publicity coupled with infamy which a trial at Sessions generally carry. It is only in rare cases where the sexual intercourse resulted in serious injury to the wife that the magistrate trying the case may send it up for higher punishment.

19. At present I cannot suggest anything more, though it would be much desirable if there was less police interference in cases of rapes by husbands on wives, but it is difficult to suggest any better method as the circumstances stand. If, however, the tone and morale of the police are improved much more than what they are, the danger of the abuse of the power would be greatly minimised.

20. I agree with the view of the first part of the question. The latter course is fraught with many dangers, specially in the case of masses who are generally ignorant and uneducated. This kind of legislation will cause a universal upheaval in the society which at it stands at present is not warranted. Before this kind of law is made it is necessary to educate the people and as the education of masses would still require a long period, the new law would place the masses entirely under the control of the police, more so when the decision about age is still regarded very difficult as shown above. So far as the educated classes of the province are concerned they would not mind if the minimum age of marriage is fixed as stated above they do not generally marry their children before 15 or 16. But the cases of masses is different and they will not be in a position to prevent police tyranny or interference.

21. I rely on the raising of the limit as stated above and also on the spread of education and growing of public opinion. Some years ago, even amongst educated classes early marriages were not rare, but as they got education and moved about and the public opinion grew such marriages have become nil in that class.

I am willing to give evidence before the committee provided I am given a sufficient notice of the date and the place where the committee would examine me.

Written Statement, dated the 21st August 1928, of Mr. MAHOMED BACHAL, Memon, B.A., LL.B., Sub-Judge, Jacobabad.

1—2. Yes. The Age of Consent should be uniform and be fixed at, say, 16 for strangers and husbands. There should be no distinction between stranger and husband.

3—4. These crimes are not frequent in this part. The amendment of the law in 1925 has not produced the desired results. I would propose that the

Age of Consent be fixed at 16 in all cases, to achieve the end in view or better to penalise child-marriage.

5. 12 to 14. No. The difference is owing to climatic conditions.

6. Cohabitation is common in this part soon after puberty and not before it. It is rare before the girl completes 13 years.

7. Not in this part of the country.

8. No.

9. Attainment of puberty is not sufficient indication of physical maturity. I would propose the consummation at 16.

10. 16.

11. No.

12. Yes.

13. Yes. It is confined only to educated people.

14. Yes. Because of their illiteracy.

15. No. There should be no distinction.

16. No.

17-21. In my opinion legislation fixing minimum age of marriage will be more effective since the offence can come to light easily. In the other case the offence cannot be detected. Legislation will be more effective than social sanction.

In view of above replies, I think, it is not necessary that I should be called to give oral evidence.

Written Statement, dated the 21st August 1928, of Professor S. N. PHERWANI, M.A., Organizer, Women's Health and Education Society, Shikarpur, Sind.

1. There is no dissatisfaction in our part of the country, people are hardly aware of the law.

2. Advance in the law relating to the Age of Consent is necessary on account of humanitarian considerations, and owing to the prevalence of early and unequal marriages.

3. The law has not been altogether effective, but it has a tendency along with other cause in stimulating public opinion in that direction. An advance in the Age of Consent will have further effect in the desirable direction.

4. My medical friends inform me that Hindu girls attain puberty at the age of twelve or slightly thereafter, while the Mahomedans about a year later.

5. Cohabitation in Sind is common immediately after marriage. I find that out of every hundred maternity cases conducted by us two are reported to have had their first delivery at the age of thirteen and four or five at the age of fourteen. These cases do not go to Court. True facts would soon be suppressed if people know that danger attaches to making these statements.

6. Early consummation in Sind at least is due to paucity of girls, to custom and want of self-control, rather than to any religious injunction.

7. Ganna and Garbhadan ceremonies are not usual in Sind.

8. My medical friends tell me attainment of puberty is not enough to justify consummation. The girl should be at least thirteen, preferably fourteen. Girls are not, as a rule, fit for consummation of marriage till a year after establishment of menses.

9. At the age of sixteen at the least.

10. Two cases of injury are reported to have come to the notice of our medical officers. It is likely there are several others, but such cases rarely

seek the advice of male doctors. The injuries in the cases mentioned were in the nature of laceration of the vagina, and in one of these with fairly serious bleeding.

12. Early consummation does not as a rule, my medical friends tell me, lead to any immediate physical harm to the girl. But results are very disastrous later on both to girls and their progeny. Girl-mothers are not able to take care of their children as satisfactorily as maturer ones. There is often early stoppage of education and consequent ignorance of young mothers.

13. None to my knowledge, but it has co-operated with other causes in educating public opinion, against early marriage in general.

14. Where ignorance prevails disappointment is shown if cohabitation does not occur after marriage.

20. I consider both to be necessary. The minimum age of marriage is necessary for postponing marriages, the Age of Consent for affording protection to the unmarried on account of pressure of law. Minimum age of marriage would, I think, be favoured in Sind. My medical friend writes: "It is much better that minimum age of marriage be fixed. Marriage is a public function and many people are likely to know about it. Falsification of age is very unlikely. But when a girl is married even some of the members of the family are ignorant of cohabitation of the pair. Legislation fixing the minimum age of marriage and education of the female folk are the only means which can eradicate the evil."

21. I would press both penal law and social propaganda into service to eradicate this longstanding evil.

Written Statement, dated the 7th September 1928, of Mr. UDHARAM CHANDUMAL, B.A., Zamindar, Shahdadpur (Sind).

1. Yes, there is dissatisfaction among the educated portion of the community.

2. (2) Advanced public opinion and increased knowledge about sexual law and matters justify, in my opinion, making an advance on the present law.

3. I possess no definite information on the subject, but local customs and circumstances necessitating practice of early marriage among the Hindus, as well as the Musalmans, would lead one to conclude that crimes of seduction and rape must not be infrequent in this part of the country. The Amendment of 1925 must have reduced cases of rape outside the marital state.

4. (1—3) No; because of the force of custom of early marriage among the Hindus, and of reciprocity in the contracting of marital ties which, not infrequently necessitate it among the Musalmans.

5. Girls attain puberty here between the ages of 13 and 14, due mainly to early contact of the young married couples and the consequent early development of the sex notion.

6. (2) Cohabitation is common in this part of the country soon after puberty in the Hindu middle class consisting mostly of traders and land-owners, who, for want of proper education are still bound by the old custom of early marriage. No cases come to Court.

7. No.

8. No. Garbhadan ceremony is performed in this part of the country.

9. I think consummation should take place three years after the attainment of puberty by a girl for the sake of her physical development, health, and good constitution and health of her progeny.

10. At 18 years of age.

11. Yes, I have come across such cases, but cannot give details.

12. Yes.

13. There has been further development of opinion in the educated classes only in favour of raising the Age of Consent.

14. Ignorant women do favour.

15. Yes, difficulties are experienced. I can suggest only improvement in the present system of recording births and deaths.

16. Yes, if it is raised to 17 or 18 years.

17. Yes, I would separate extra-marital and marital offences into different classes. I would retain the nature and amount of maximum punishment under the existing law for extra-marital offences, but for marital offences I would prescribe only fine to the maximum limit of Rs. 5,000 (five thousand) or simple imprisonment in case of default.

18. Yes, I would also make a change in the existing rules and practice in regard to the procedure of trials for marital offences. The trials should be held *in camera*, and by a bench of magistrates specially constituted for the occasion from the enlightened members of the community to which the parties belonged.

19. In the case of marital offences, I would suggest the investigation before trial to be held not by the police, but by two or more respectable persons selected by the District Judge from among the list of jurors or assessors, whichever system be in vogue; such jurors or assessors to belong, as far as possible, to the community of the party complained against.

20. I think legislation fixing the minimum age of marriage will be more effective than fixing a higher Age of Consent for the marital cases for the obvious reason of being more directly preventive. It will also be in consonance with the opinion of the press in general and the educated portion of the community. Opposition thereto will be raised, mainly, from the motive of saving expenditure on marriage festivals by the celebration at one and the same time, of marriages of two or more daughters or close cousins of ripe and unripe ages, or of escaping some physical inconvenience by such joint celebration.

21. I would rely both on penal legislation fixing the minimum age of marriage and on the progress of social reform by means of education and social propaganda.

**Written Statement of K. B. CHAKERKHAN SUHRANI, Chairman,
School Board, District Local Board and Special Second Class
Magistrate, Kandhkoto, U. S. F., Jacobabad.**

1. There is practically no education in this district and the people are not enlightened enough to know the age-limit when a person should cohabit with his wife as not to commit an offence or at what age the adultery with another woman would be rape and therefore the question of dissatisfaction does not arise.

2. (1) In case of sexual intercourse with his own wife same age-limit should be maintained.

(2) In case of strangers, the present age of 14 may be raised to 16.

In this Baloch country such crimes are rarely committed and therefore the question of rise or fall in the number of offences does not arise.

4. The amendment of 1925 regarding the age-limit has produced no effect in this district and the state of affairs now is the same as was before the amendment. The custom of child-marriage is not in vogue in this district.

5. In our country the girls usually attain puberty at the age of 12.

6. There is no cohabitation in any caste or class in this part of the country—

(a) before puberty,

(b) but in case of marriage people resort to cohabitation soon after puberty.

There are no crimes reported in such cases.

7. There is no religious injunction to marry before puberty. But there is such injunction to marry on puberty as is contained in "Koran", "Sharif", "Hadises" and "Fakih" books. The failure to do so is not punishable but the wrong-doer is considered sinner according to "Shariat".

8. There is no such custom in this part of the country but the custom prevailing is that in case of Nikah being read with a minor girl, she remains in her father's house and on her attaining puberty the ceremony of joining hands of a husband and a wife is performed, which is called "Mathamail".

9. The girl after attaining puberty, is at liberty to cohabit with her husband. There is no likelihood of injury being caused to her health and her children.

10. In my opinion a girl can form her sound judgment to give an intelligent consequent at the age of 16 years.

11. There are no such cases having come to light in this part of country.

12. Yes. In case of consummation before puberty.

13. I have expressed my opinion on this point in reply to question No. 1. There is no such consciousness in people in this part of the country.

14. Yes.

15. No difficulty is felt here. The medical officers determine the age—no further measure is necessary.

16. In case of reply to question No. 15 the point does not arise.

17. Yes. In case of strangers, the punishment should stand as prescribed in section 376, Indian Penal Code and in case of section 376A, Indian Penal Code, the punishment of imprisonment may be done away with and the punishment of fine to the extent of Rs. 500 and whipping to the extent of 20 stripes, would meet the requirement.

18. Yes. In case of strangers the procedure should be of warrant case according to the tabular extract of Criminal Procedure Code, 1898, Schedule II, and in case of husband, the procedure should be of summon-case.

19. No further safeguard is necessary. The present law is enough safeguard.

20. In my opinion, penal legislation fixing higher Age of Consent is effective. There is no public opinion formed on any alternative in this part of the country.

21. I am of opinion that by spread of education, the object in view can better be realised than by law as it is seen that there is less of early consummation in educated class. No good will come out from social reform or lectures.

Written Statement, dated the 18th September 1928, of Mr. REWA-CHAND IDARMAL, City Magistrate of Hyderabad.

1. Yes, there is dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376, Indian Penal Code. The suffering of the women folk, due to the sex life that is forced upon them before their body is fully formed, is responsible for the dissatisfaction.

2. An advance upon the present law is necessary because girls of 14 or 15 are often misled and induced to yield. Little realizing the baneful effect of the early indulgence in sex life on their body and their progeny. The Age

of Consent should to-day be raised to 16 and later on when public opinion is further educated to 18.

3. No, the crimes of seduction and rape are not frequent in the town of Hyderabad—people being enlightened. These crimes are more frequent in the mofussils. The amendment of 1925 has to a certain extent reduced these crimes there.

4. Yes, the amendment of 1925 raising the Age of Consent within the marital state to 13 years has had some effect on the uneducated Hindus and Mahomedans generally. Among the educated Hindus the girls are, as a rule, not married before the age of 16. The child marriage is fast dying out even in the mofussil.

5. In my part of country, girls attain puberty at about 13 or 14. This naturally varies in different communities or classes. Rich diet, sensational fiction reading, talk on sex matters hasten puberty. The Muslim girls, for example, mature much faster than other girls.

6. Yes, cohabitation is common among illiterate Mahomedans and labouring classes—

(1) before puberty;

(2) soon after puberty;

(3) before the girl completes 13 years.

Pernicious life among the labourers, want of self-control and want of due respect on the part of men for their women folk are responsible for cohabitation before and soon after puberty. Such cases are rarely brought to light.

7. I do not attribute the practice of early consummation of marriage before or at puberty to any religious injunction. The so-called injunction upon Hindu parents to marry their daughters before the first menstruation is almost a dead letter here.

8. Gaona or Garbhadan ceremony does not obtain in the town of Hyderabad. The Hindus of Hyderabad are not extreme orthodox.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. It does not justify consummation of marriage. A normal girl takes about 4 years after puberty to reach that stage of development when she could bear children with safety and without injury to her own body and that of her progeny.

10. A girl of 18 years in India may be regarded as competent to give an intelligent consent to cohabitation with a due realization of consequences. In ordinary contracts, 18 is the Age of Consent. And for delicate matters such as cohabitation I do not see why the Age of Consent should be less.

11. There have been instances where cohabitation before puberty or after puberty but before full physical development of girls have resulted in injury to their health and have prejudicially affected their progeny. Girls who have given birth at 12 or 13 have become life-long cripples and their progeny physically weak.

12. Yes, early consummation and early maternity are responsible for high maternal and infantile mortality. The progeny of the immature girls lack in resisting power and vitality and are too delicate to be healthy.

13. Public opinion has developed in this direction. The number of meetings held in the remotest part of the country among different assemblies of women folk in connection with the Bill prove it to demonstration. Such meetings have been held in the town of Hyderabad as well.

14. No. Educated women in my part of the country do not favour early consummation of marriage for their children, but the uneducated women and those of the lower classes do.

15. The said difficulties are inevitable. Period between 12 and 15 is a formative period in which marked changes take place in the female organism. Because it is a formative period and period of transition, it becomes very uncertain to say if the girl is 12, 13, 14 or 15. At the age of 16, I believe, a

definite stage of development is reached. Thereafter one does not notice radical changes in the female body. Mathematical precision in determining the age of girls cannot be secured—

- (a) unless birth registers are maintained in every village;
- (b) unless effective control measures are adopted to see that no birth is concealed and not recorded;
- (c) unless only registered midwives are allowed to practice;
- (d) unless names of babies are registered in the case of Hindus after the sixth day ceremony and in the case of others after baptism.

The system of birth registers is to-day in a highly inefficient condition. Names of children are invariably not mentioned. Secret births are quite a common feature in the mofussil areas. Their entry is easily suppressed. This is very much encouraged by the existence of unprofessional unqualified midwives.

16. The margin of error in determining the age of girls in connection with offences under sections 375 and 376 becomes comparatively less if the Age of Consent is raised to 14 and still less if it is raised to 16. The period between 12th and 15th year is such that it is rather difficult to say if a particular state of development belongs to 12th, 13th, 14th or 15th year.

17. The present stage of social development necessitates for some time separation of these offences into extra-marital and marital. There will be found orthodox centres where marriage is virtually forced upon the children by parents before they are fully developed. A temptation is thus put into their way. Punishment for extra-marital offences should be more severe. Transportation for life or rigorous imprisonment up to 10 years or fine or both should prove to be sufficiently deterrent punishment for extra-marital offences and rigorous imprisonment up to 2 years or fine or both for marital offences.

18. No difference in procedure is required or else girls in marital state will not be protected against their inhuman husbands—except this that no police officer of lower grade than Inspector of Police should investigate into marital offences.

19. No further safeguards are necessary than those existing already.

20. It would be more effective to prescribe a minimum age of marriage rather than fix a higher Age of Consent for marital cases. Minimum Age of Consent would find favour with people.

21. Mere education and social propaganda would not do in preventing the crimes under sections 375 and 376. The ghost of brute that is in man will not be driven out so easily if there is no deterrent punishment for offenders under the above sections. It would take an age at the rate we are moving to dissipate the general illiteracy. To make men so good through the influence of literature and philosophy—so good as to love their neighbour and respect womanhood—even boy and girl would take how long, it is difficult to foretell. We must, therefore, for the present depend upon the penal law of the land in exterminating the crime of seduction and rape.

Written Statement of G. D. KHOSLA, I.C.S., Sub-Divisional Officer, Bhakkar.

1. Yes, among the more enlightened classes especially Hindus.
2. No remarks.
3. Extra-marital rape is not common. Cannot say if the 1925 amendment has made any difference.
4. Very little. The only effective step is the Child Marriage (Prevention) Bill being enacted into law.

5. From 12 to 15. The age varies with communities. The uneducated classes attain puberty sooner, though as the period of adolescence in these cases is longer. Maturity is attained at pretty much the same age in all classes, and the proper age for maternity does not vary much.

6. (1) Cannot say.

(2) Yes, very frequent in the lower and middle classes.

(3) Yes. Very few cases come to court, as there is no effective check.

7. No, except that there must be progeny and this is taken to mean that fatherhood must be attained as early as possible.

8. No remarks.

9. Certainly not. At least 4 years of adolescence must elapse before motherhood. The age of 16 for a girl is the absolute minimum.

10. 15 in most cases. In some cases 16 or 17 or even 18.

11. Yes.

(1) Age 15. A perfectly healthy girl. First child-birth caused death of mother and child.

(2) Age 14. After puberty. The first coitus resulted in violent injury to uterine. Maternity become absolutely impossible.

(3) Age 13. After puberty, a violent hysteria followed after coitus.

12. Partly infantile mortality chiefly due to insanitary condition prevailing at each child-birth. Early consummation has a serious deadening effect on the intellectual or physical progress of the people. Children born of immature parents are very sex conscious and hence their libido rarely gets sublimated.

13. Cannot say.

14. In certain classes yes, as it is thought to prevent immorality. But this fear of immorality is due chiefly to sex consciousness. See 13, *supra*.

15. No remarks.

16. Yes, certainly if the age be fixed at 16.

17. Yes. The punishment fixed in the Act is too low and unsuitable. For marital offences the punishment should be 5 years' rigorous imprisonment.

18—19. No.

20. No. The public opinion does not like interference between the behaviour of the spouses. The only effective method is to fix the age of marriage at 16 as a minimum. This, the people would get used to very soon.

21. Both. These things counteract on each other and go hand in hand.

Written Statement, dated the 27th September 1928, of Khan Bahadur MIAN PIRBUX, C.I.E., President, District Local Board, Sukkur.

1. No complaint of dissatisfaction with the present law has come to my notice.

2. In my opinion if an attempt is made to make an advance on the present law, it will safeguard the moral character of the public. The Age of Consent, however, requires to be raised in the case of non-marital state only.

3. Crime of seduction is frequent in Sind. Cases of rape are not so frequent. Very few complaints about the latter come to courts. The amendment of law has in a slight degree succeeded in preventing or reducing cases of rape or seduction. In order to reduce cases of seduction, the seduced woman who is in many cases an abettor of the offence should be tried as an abettor. Generally she comes as a witness to support the accused.

4. (1) No.

(2) Public are not generally aware of the amended law as it stands in the cases within the marital state. No public opinion has, therefore, been stimulated in that direction.

(3) No. No further measures appear to be needed, except that the law should be widely published.

5. In the case of Mahomedans, the girls attain puberty at the age of 12 to 14. I cannot say anything about other communities.

6. (1) No.

(2—3) Yes. These cases do not generally come to courts.

7. There is no practice of consummation of marriage before puberty but religion enjoins us that this should be done as soon as puberty sets in.

8. No.

9. This question can best be answered by medical authorities.

10. In most cases, 14 is the proper age.

11. No such cases have come to my notice.

12. Early consummation and early maternity are partly responsible for high maternal and infantile mortality.

13. There has been no further development of public opinion.

14. Yes, they do.

15. We have to depend upon medical evidence for determining the age of girls. A certified extract from the birth registers will be more useful.

16. No difference will arise.

17. Yes. For marital offences, the punishment should be restricted to that of fine only.

18. No difference is suggested.

19. I cannot suggest any further safeguards.

20. Legislation fixing the minimum age of marriage is not desirable. It will offend Mahomedan feelings.

21. To secure the object in view, I would prefer to rely on the progress of social reform by means of education and social propaganda. I do not advocate the strengthening of the penal law on the subject.

Written Statement, dated the 13th August 1928, of Mr. AMADI, Hyderabad (Sind).

3. In my part of country child marriage rare especially in Musalmans.

5. From 13 to 17 years.

(b) Different.

6. Not amongst Musalmans.

7. Only in special cases allowed by religion.

8. This ceremony not performed amongst Musalmans.

9. (a) No.

(b) After 3 years of puberty.

10. Between 16 and 17.

11. Yes, amongst non-Musalmans.

12. Yes.

15. 16 and 21. Early marriage not common in Muslims, hence my community needs no new law in lower castes. Social reform can remove the evil if common.

Written Statement, dated the 14th September 1928, of Mr. W. N. RICHARDSON, KARACHI.

Very few people are aware of the provisions of sections 375 and 376 of the Indian Penal Code, but many view with concern the high infant mortality in large towns and attribute it mainly to the marriage of immature girls and the consummation of marriage immediately the wife attains puberty.

In my opinion the time has arrived for an advance on the present law. If I am asked my reason for my opinion, I am unable to give any statistics to support it and rely on facts which have come to my knowledge as a magistrate and from observation. It is the custom of all magistrates in India as well as in England to hear those who bring their troubles and perplexities to them and to give them such advice and help as he may be able to give.

The crimes of rape and seduction are frequent but few cases come into court. The law is powerless to prevent such crimes and requires to be implemented. I committed one case of rape by a husband of his wife to the Sessions Court (Crown vs. Ismail), which is referred to in the evidence of Mr. Rupchand Bilaram. The husband was convicted. In this case it was obvious to me that the wife had been raped several times and that the offence was committed each time with the connivance of the girl's mother who would not have complained if the husband had not turned her out of the house. The husband was ignorant of the law and surprised to hear that he had done anything wrong. I am informed that this is by no means a solitary case of its kind. Girls attain puberty in India any time between the ages of 12 and 14 and I am informed that there are numerous cases of cohabitation between the husband and a wife under the age of 13. The belief prevails among many people that cohabitation with a virgin is a cure for venereal disease.

As regards the unmarried girl, the position seems to be different. If she has a natural protector, such as a father or mother, she is protected against seduction and rape, but for the unprotected girl and the girl with a working mother there is no protection. Few of them under the age of 14 are virgins. They are the prey to the carnal desires of all kinds of persons and are easily seduced.

Cohabitation of husband with a wife soon after puberty is I believe based on no religious injunction but on the advice of Brahmans in the case of Hindus. If the husband is kept away from his child-wife, he sometimes visits a prostitute in order to satisfy his carnal desires.

It stands to reason that the offspring of immature mothers cannot be healthy and that a great deal of infant mortality is due to the marriage of undeveloped girls. The virility of the manhood of India depends in a vital degree on its marriage laws.

What is the remedy? I think that one step, an important one, is the raising of the Age of Consent and implementing the present law.

In my opinion—

- (a) the age of consent within the marriage state should be 16 years of age and 18 for unmarried girls;
- (b) in all legal proceedings under sections 375 and 376 a margin of error of 6 months should be allowed only in the case of rape by a husband of his wife;
- (c) the marriage of girls under 16 and of youths under 18 should be declared to be illegal;
- (d) proof of age of the girl and the man to be married should be produced before they are married; the performance of the marriage rite without such proof should be illegal and penal; and all marriages (like births, vaccinations and deaths) should be compulsorily registrable.

Drastic legislation of this kind will meet with opposition from all directions. As far as possible legislation should be the expression of informed public opinion. The first step in my opinion should be raising of the Age of Consent, the second the making of the marriage of girls under 16 illegal; and the third the registration of marriages.

The offence of rape by a husband on his wife should be cognizable only on complaint made to a District Magistrate and the offence should be compoundable with the permission of the District Magistrate.

AHMEDABAD (GUJERAT).

Oral Evidence of Mrs. NANIBEN VAISHNAV, A. G. Maternity Home, Ahmedabad.

(Ahmedabad, 15th October 1928.)

Vernacular.

Chairman: How long have you been in this maternity home?

A. For the last 3 years.

Q. Are you doing any social work?

A. I was doing general supervision. There were 825 confinement cases in this maternity home during these 3 years. We do not take cases of any other diseases.

Q. Were there any cases of girls who may have been mothers at 13, 14 or 15?

A. There was only one case of 14. There were 9 cases of mothers of 15 years, 33 cases of 16 years and the rest were above 16 years.

Q. Do you think the age of marriage has been raised during the last five years?

A. Yes, it is now between 16 and 20. This age is among Nagars, Patidars, Jains. Generally people of higher classes of Hindus come in the maternity home. We do not take people of lower classes.

Q. Do you know any cases where marriages take place early?

A. Yes, among the lower classes marriages take place between 13 and 14. 50 per cent. of the population marry at this age. Recently we signed a memorial about raising the age of marriage. Women want the age of marriage to be raised to between 16 and 18 in the case of girls and 22-25 in the case of boys.

Q. Does consummation take place immediately after marriage?

A. No. There is a custom of Ana or muklawa. It takes place one to three years after marriage according to the age of a girl.

Q. At what age is a girl sent to her husband's house?

A. She is sent after the attainment of puberty. Puberty is attained at 13, 14 or 15.

Q. If Government fixes an age for marriage would women favour it? Do you think there will be any dissatisfaction?

A. There will be no dissatisfaction.

Mrs. Nehru: Do you think cohabitation generally does not take place before 15?

A. Not among the higher classes. Among the lower classes Bhils, Kohlis and Kachhis girls are sent early to their husband's houses. There is one gwala class who do not send girls up to 21 years. That is an old custom among them.

Q. Have you only experience of villages?

A. Yes, village people send early.

Q. Do people know about the existence of the Age of Consent law?

A. Educated people know but others do not know.

Q. If the Age of Consent is raised will it be effective?

A. Yes.

Q. Why has it been ineffective so far?

A. Because it is not known.

Q. Have you seen girl mothers suffering on account of early motherhood?

A. Yes, the babies are very weak and there may be rupture of perineum.

Q. Whose is this maternity home where you are working?

A. It is under the trust and the Hon'ble Mr. Harilal Dessai is the chairman.

Q. Is there any other maternity home for the poorer classes?

A. We do not restrict it to any class or community. They have restricted it to Hindus only but our situation is such that it is usually utilised by higher class people. We charge Re. 1 per day, but in the case of poor people we treat them free.

Mr. Mitra: Would you make any difference between marital and extra-marital cases? Is it not necessary that in extra-marital cases the age should be still higher?

A. Yes, 16 years for marriage and 19-20 years in extra-marital cases.

Mr. Bhargava: In the Gwala community among whom girls are sent at 21st year, are the girls stronger than others?

A. Yes, they are very strong. They marry at a very early age, but Ana does not take place before 21 years.

Q. We were told that there is a system of mass marriage. After how many years does it take place?

A. After every 8 years there is a marriage day when all the children irrespective of their ages are married. This custom exists among the Kombis and Gwalas. It is dying out now. Although they are married at such an early age they are not sent to their husband's houses before 21 years.

Q. Is widow remarriage prevalent among them?

A. Yes. Higher classes do not like widow remarriages and it does not exist among them.

Mr. Kadri: What about the children born of young mothers? Do they suffer?

A. The children born of girl mothers are very weak and the girls generally misarry. The children born of mothers up to the age of 15 or 16 are very weak and some die and the weight of the baby is below par. If the girl of 16 is stronger then the weight of the baby is more. I belong to the Patidar class and we are all of opinion that if the age is raised it would be better. In the case of punishment it should not be only fine, but imprisonment should also be prescribed. When the age is raised propaganda work should be done, so that the public may know what the age is and that it is an offence to consummate marriage before that age. There is a society Mahila Mandal who will help in bringing cases of the breach of the Age of Consent law to light. Parents should be held responsible for early marriage and early consummation because it is parents' duty to celebrate marriages and consummation takes place with their knowledge, rather at their initiative. There is no consent of the wife or husband. Up to the age of 25 parents should be held responsible, but after the boy is 25 years he should himself be responsible. In that case the husband should be fined or imprisoned. The health of Gujeratis and Kathiawaris is not good on account of early consummation. Mothers develop tuberculosis after 2 or 3 children. Sometimes a girl is pregnant after 12 months because the child dies and there is no suckling. The custom of gauna or muklawa does not exist here now.

Q. Do you know anything about Lohanas?

A. Among them there is early marriage at 12. Girls are sent to their husband's houses even before puberty. If the girl is a mother at 14 the weight of the baby on birth is 5½ lbs. and at 16 it is 6 lbs. while in England the weight of the babies is 7 lbs.

Q. What about the new marriage? How is the date fixed?

A. The date is fixed at the temple of Onja near Sidpur. They assemble after 8 years and then put pieces of dates and then the drawing takes place. The date that comes out is adopted for the whole caste. The Panch assemble together and decide the fixation and drawing of the date.

Q. If we organize a committee, will that help us in the matter of bringing to the notice of proper authorities that younger girls have been married in this new marriage?

A. Yes.

Written Statement, dated the 11th August 1928, of Dr. MANILAL H. BHAGAT, L.M. & S., Vice-President, The Ahmedabad Medical Society, Honorary Physician, A. G. Maternity Home, and Secretary, M. R. Orphanage and Widows' Home, Ahmedabad.

1. Yes. The Age of Consent ought to have been raised further than under the present law, long ago.

2. (1) No.

(2) There are many circumstances, among them being:—

- (a) The tenderness of the physical build of girls at the age of 13.
- (b) Absence of proper understanding as to the responsibility which it involves at the age.
- (c) It is probable that within the marital relations, the consent is not consciously given.
- (d) Absence of widow remarriage among higher castes creates the situation wherein girls of tender ages are given in marriage to husband of advanced age, owing to various economic considerations, and such husband hurry over their marital rights resulting in early maternity, to the permanent break down of Child mother's body.

3. No.

4. Such cases do not come to light, therefore this may be looked upon as doubtful.

(1) It has not resulted in postponement of consummation of marriage.

(2) Public opinion is to a certain extent responsible for the raising of marriage age in towns and cities principally, but the villages are not affected.

(3) No. In order to make law effective the minimum marriageable age for girls should be fixed at no less than 15 years and any violation of it should be made penal.

5. (1) Usually between 13 and 14 years.

(2) It does not depend upon caste or community.

6. (1) Yes, within marital relations it is fairly common before puberty.

(2) Necessarily yes.

(3) Yes, such cases never come to courts being within marital-relations, the natural guardians do not complain.

7. Absolutely no.

8. No.

9. No. At least 2 years after puberty.

10. If it is a question of intelligent consent, as such, apart from physical age-limit, for the purposes of safe cohabitation, no girl in India can be considered competent to give intelligent consent before she is 18 years.

11. From my experience as a Medical Practitioner of 21 years I am of opinion, that in maternity cases, below 16 years age, injury to maternal parts (perineum) is always common. Coupled with the fact that there is hardly sufficient milk in their breasts for the babies to suck. Babies born of such mothers are frequently of low weight so much so, that their average weight is less than 6 lbs.

Premature delivery is also fairly common among girls below 16 years and pelvic measurements are found to be minimum normal; therefore delivery is always anxiously awaited by the Medical persons in attendance.

12. Yes. The general result is the physical and intellectual degeneration of both the baby and the mother, the baby being a rickety crippling and the mother whose body weight, with few exception, is below 80 lbs., awaits the advent of tubercular infection for which her body has become a suitable receptacle.

13. Yes. The public opinion in favour of extension of Age of Consent, is found mostly in the Educated and Social Reformers, who are vocal; but there is a great deal of silent dissatisfaction among other classes as well, who are not able to break the old bonds of customs.

14. No.

15. Not known to me.

16. If there are any difficulties, they would certainly be minimised by raising the age to 15 years or above.

17—18. It is not necessary to make a difference between the marital and extra-marital offences; if marriage age is fixed at 15 years otherwise, extra-marital use should be penalised before 18 years.

19. The only safeguard either way would be to fix the minimum age of marriage for a girl at 15 years.

20. Preferable to fix the age of marriage as stated above.

21. Both.

Oral Evidence of Dr. MANILAL H. BHAGAT, L.M. & S., Vice-President, The Ahmedabad Medical Society, Ahmedabad.

(Ahmedabad, 15th October, 1923.)

Chairman: Are you the honorary physician of the Motlibai maternity Home?

A. Yes.

Q. Naniben is the matron?

A. Yes.

Q. You have got one year's practice?

A. Yes.

Q. Can you tell us what is generally the marriageable age here among the higher classes and the lower classes?

A. There is a great difference between the cities and villages. The city age is nearly 15-16 and in the villages it is 13 and sometimes 14, but never later than 14.

Q. The difference is between urban and rural areas?

A. Yes, it is on account of more progress in the cities. Besides there is a difference in higher and lower classes in the cities. Nagars, Braham Khashatrias, Jains are advanced classes. They marry at about 16 years.

Q. In the other classes there is lower age.

A. Yes, it is 15 to 16. These classes are Banias, Patadars. These are also higher classes.

Q. In the lower classes where the marriage takes place at about 13 does that coincide with the age of puberty?

A. Not necessarily. The age of puberty may come before or after marriage.

Q. Are the girls sent soon after marriage to husbands' house whether puberty is attained or not?

A. That depends on the age of the husband. If the husband is a boy they are not sent and if the husband is a mature elderly person or he is marrying a second wife then she is sent notwithstanding the fact whether she has attained puberty or not.

Q. Have you reason to believe that in these cases cohabitation takes place before 13?

A. Yes. Last year we had one child mother who was only 14.

Q. Is that a solitary case in 3 years?

A. Yes, it is not very common. That was one case out of nearly 900 cases.

Q. Outside the maternity home have you had any occasion to visit girl mothers of 14 or 15?

A. At 15 it is common. In those cases the husband is almost always a widower.

Q. In those cases where girls become mothers at 15 what is the condition generally of the babies and the girls themselves? Do they stand to suffer or are they all right?

A. I have not made out any special case but I have noticed that generally children of such mothers are smaller in size and weight. Such mothers do not and cannot stand the shock of maternity as well as girls of 17 or 18. Almost all girl mothers get anaemia.

Q. In answer to question 6 you have said that within marital relationship cohabitation before puberty is fairly common?

A. Yes, it is in villages.

Q. Would you put it below 13?

A. I will put it down as 13½ years.

Q. Have you also said that there are cases in which cohabitation takes place before 13?

A. Yes, that is also in villages.

Chairman: In answer to question No. 13 you say there is a silent dissatisfaction among the other classes as well who are not able to break the old bonds of custom.

A. This is quite true at least of Vaishnav and Brahmins.

Q. Your meaning is that if we have a law fixing the age of marriage it would strengthen their hands.

A. Yes. They cannot marry their girls late because the Panchs and the leaders of the community are very old people and they are of old ideas. If any civilised man says that girls should be married late he will be thrown over board and nobody will hear to him. This is practically done in our community.

Q. What is your community?

A. Vaishnav community. There is dissatisfaction among the Banias and the Brahmins and especially amongst the fairly good educated class. We cannot break our traditions only because no permission is given to us by the elders.

Q. You therefore welcome the law.

A. We do welcome it.

Q. In answer to question No. 19 you have said the minimum age of marriage should be fixed at 15. Is that correct?

A. I have been in touch with villages and the age at which girls are married is 13 and if you go to 16 or above there will be a row among these people.

Q. Do you put 15 as a compromise, as a first step, considering the village life?

A. Yes.

Dr. Beadon: Do you think there will be great deal of immorality if we raise the age to 16?

A. No. They do not go wrong at this age. There will be a row among the villages. Mothers do not take care of their daughters and generally these girls come in touch with other immoral people, so the safest thing they think is to go in for early marriage and whatever may be the fault of the girl it can be hidden.

Q. For how many years you have been a medical practitioner?

A. For 21 years.

Q. How many labour cases have you conducted?

A. I have kept no special record. I have specialised myself in midwifery. I have been dealing with so many cases.

Q. For the last two years, can you say how many cases have you treated?

A. I have been treating two to three cases daily. I attend these patients during pregnancy.

Q. That would mean that you have attended 7 or 8 hundred cases during the last two years. What percentage of these would be young mothers?

A. I have treated no cases below 15. Generally they are between 15 and 16. Hardly 20 per cent. are below that age.

Q. How many of these girls have suffered from pernicious anæmia?

A. They do not get pernicious anæmia. They have secondary anæmia. I am a family physician. I have attended mothers and their mothers. I can say a large percentage of mothers suffer from anæmia.

Q. Would you say more than 50 per cent. girl mothers get anæmia?

A. Yes.

Q. Do they die?

A. It does not cause death. It spoils the life. Mothers do not take any interest in life. No sooner they are cured another child comes. The first shock may not have been cured properly before another child comes.

Q. Do they become invalids after three or four years?

A. Not so much as invalids. They carry on with their bad life and they are always complaining of leucorrhœal troubles and tuberculosis is the only result.

Q. Do you get a large percentage of tuberculosis amongst these young mothers?

A. A very large percentage in Ahmedabad. The number is on the increase in women.

Q. Is it because of Purda?

A. There are several causes. There is very bad congestion here and ventilation is neglected. Bad hygienic conditions is one of the causes. The labour is often very clumsy.

Q. Is it your opinion that the vitality of the young mothers is affected more than women of 18 or 19?

A. Surely in the case of younger mothers the vitality is sapped more than in the case of grown up mothers. Injury to the perineum is very common. In the case of young mothers on the occasion of the first child birth in almost all cases we have to insert stitches. Size of the head for a girl of 15 is generally too big.

Q. We have been told that in the case of young girls the delivery parts stretch. You don't find that they stretch sufficiently.

A. No.

Q. Do you think that a girl of 18 is not so likely to be in need of stitching as a girl of 15?

A. A girl of 18 will not require stitching. A girl of 15 requires one or two stitches.

Q. Have you met any cases where coitus before puberty has resulted in severe injury?

A. Such wives do not come for treatment. They send their husbands or relatives for medicine. I have attended, without seeing the injury, some cases in which there is bleeding and extreme pain on account of tearing of hymen.

Q. Can you remember how many cases you got during the last two years?

A. One or two cases a year occur.

Q. Do you think that unless the injury is severe people don't consult the doctor?

A. They do not.

Q. What about the children? Are the children fairly well off?

A. If the husband is a boy husband the child is invariably small. If the husband is a grown up man, about 25 or 30 years old, the child would be large enough. A normally healthy child weighs from 7½ to 8 lbs. When such a child comes out of the perineum the injury is very great.

Q. What about the children? What percentage are under weight? Would you say that 30 per cent. are small and 70 per cent. are fully grown up?

A. About 50 per cent. or more girls are married to elderly people and a small percentage about 30 to 40 per cent. are married to boy husbands. The reasons for this are economic. The boy is dependent upon the parents and they expect to get something by way of dowry. In such cases the damage is very great. There is no widow remarriage amongst us. If the marriage of these young girls with grown up men is stopped the whole problem will be solved.

Q. You are the Secretary of the Orphanage and Widows Home.

A. Yes.

Q. How many widows are there?

A. There are about 25 widows waiting for child-birth.

Q. So this is meant for giving relief to the illegitimate pregnancies.

A. Yes.

Q. How long do you keep the widow with you?

A. Three or four months before child-birth they come to us and till six months after the child-birth they remain with us to rear up the child. There are about 70 births every year.

Q. What about the children?

A. If males, the society accepts them when we have trained them up. They are reared up and they are educated here.

Q. Upto what age do you keep them?

A. Upto 15.

Q. What about the girls?

A. They are married to people in society. They have no objection in taking these girls. A shroff married a girl only 6 months ago. The problem is more difficult in the case of boys. They are sent generally to local mills where they learn something.

Q. At what age do you marry girls?

A. Generally two years after puberty is established.

Q. How many years back was this home established?

A. 36 years.

Q. Have you found any case of immorality among the girls?

A. There have been one or two instances. A girl took poison and a boy also took poison as they could not marry each other. Those are the instances we have had, otherwise there have been no cases. There is no immorality.

Q. Are the boys and girls brought up together in this home?

A. They have got separate blocks. They are like a family. The widows remain in a locked up room. They have got a separate block altogether.

Q. What happens to the widows after child-birth?

A. The society accepts them. Nobody speaks of them.

Q. May I know what caste these widows are?

A. They are of higher castes, Brahmins, Jains and others. There are some cases of virgin Parsis and virgin Mohammedans. There is an Anglo-Indian virgin of 14½. We received one Mohammedan virgin last year. There are about 100 widows in all.

Q. Do you get any Hindu virgins also?

A. No.

Mrs. Nehru: Are the widows in your home all expectant widows?

A. Yes.

Q. In the course of your reply to question No. 2 you have said that owing to various economic considerations girls of tender ages are married to husbands of advanced ages which results in early maternity and permanent breakdown of child mothers' body. I want to know whether such cases are many?

A. They are many enough. More than 50 per cent.

Q. Is it generally in the case of first marriage or second marriage?

A. They are elderly men. They marry for the first as well as for the second time.

Q. If they marry for the first time, do you think the percentage would be as high as 50? Then it would lead to the death of girl-wives in very large numbers.

A. Even first marriage takes place late in life on account of economic reasons.

Q. Is early marriage still prevalent in villages?

A. It is common enough. One cannot revolt against the community. Last year I had to celebrate the marriage of my son at 16. The punishment provided by the caste panchayat is very great. There is a fine upto 5,000 rupees. That is why our progress is very very slow. The caste hold is still great. We have got these caste panchayats all over and the decisions of the caste panchayats are followed. They have to be followed. If you refuse to marry your son when the offer is made once or twice he won't be married at all.

Q. If public opinion is for raising the age of marriage why can't you form another panchayat? Is there any election?

A. It is the elderly people who sit together and form the panchayat. The members are not elected.

Q. How do they get the approval of the rest of the community?

A. We have only to abide by their decision.

Q. Are there any qualifications for the members?

A. To be born in a high family is the only qualification. It is more or less hereditary.

Q. What are generally the questions decided by these panchayats?

A. All questions relating to marriage and caste generally, including festivals, etc.

Q. Is there any age fixed for marriage in your caste panchayat?

A. There is no age fixed.

Q. How does the Panchayat say then that such and such a man will or will not be married?

A. The father of the girl simply sends a warning that my daughter will be married to such and such boy. When the girls' parents decide to marry the boys' parents have to yield. Once the betrothal ceremony is performed the parents of the boy have to yield.

Q. But why do they have that ceremony so early?

A. You have to. If a man does not accept the offer there is a regular annoyance towards that man at every instance. Of course recently some objections have been raised against this sort of thing. They don't like anything new. Even if some rules have been made they do not act accordingly nor do they allow others to act accordingly.

Q. You suggest that the marriageable age might be fixed at 15. Supposing such a thing is not possible, would you advise raising the Age of Consent?

A. There is nothing like Age of Consent to our people. They do not know anything about it and therefore the only solution will be the raising of the age of marriage.

Q. If you cannot do it?

A. The Age of Consent will have no effect upon our uneducated people.

Q. What has been the cause of its not having been effective at all?

A. No education and bad customs form the only answer.

Q. If the law is made publicly known and everybody knows of the existence of the law is it possible that the people will act upto it?

A. There must be certain punishment and that punishment must be known to these people. The time must come when they must yield to the law.

Q. In answer to question No. 6, you say that cohabitation before puberty is fairly common. Does it apply to any particular class of people?

A. In all higher classes it is common. Some castes are educated, they are far advanced, there is nothing of this sort. In those classes where education is very little it is common. It is also common where the husband is of an advanced age. Then for economic reasons also it takes place early sometimes. In some cases there is no servant and the wife is immediately sent for in order to do cooking and other household work.

Q. You say, naturally the guardians of the boy and the girl do not complain. Under those circumstances whom would you like the right of complaint to be given?

A. If you set up some sort of society for this purpose this will result in some good.

Q. You mean that village panchayats should be set up and any case that comes to their notice must be reported by them, and it is only then that the law can be effective. Is it so?

A. Yes.

Q. Who should appoint them?

A. The municipalities or the taluk boards could do this. As long as there is no information to the Government or to the police no improvement in law will have any effect, whatsoever.

Q. Do you think that the present punishment is alright?

A. It is not. I think the parents must be punished if the boy is under a certain age.

Q. What age would you prescribe for the boy?

A. Under 18 years. I think even then the boy should be punished with some fine. If the husband is big enough and understands the responsibilities of life then he must be punished as under rape section.

Q. What punishment should be given to the parents?

A. Simple imprisonment for about three or four months.

Moulvi Muhammad Yakh: You have said that early consummation causes injury to the girl. Upto what age is such injury sustained?

A. If it comes it comes at a very young age, say, 13.

Q. Does it vary according to the age of the husband?

A. The boy husband will not cause any injury and the big husband will cause injury.

Q. Would you therefore propose any proportion between the ages of the husband and the wife?

A. No, I would not.

Q. You would allow a man of 61 to marry with a girl of 15.

A. No. A person under 25 should be allowed to a girl of about 15 or 16

Q. Should not those who are above 25 be allowed to marry at all?

A. They must go in for widows.

Q. But you say widow marriage is not common.

A. It is not at all common.

Q. Will your Home provide wives for them?

A. It does provide to a certain extent if they ask for them.

Q. Assuming all of them are married, then in that case, will you tell me upto what age is the injury sustained?

A. Upto 16.

Q. Does it vary also according to the age of the husband?

A. It does. If the husband is a grown up man the foetus will be large enough and boy that will be born will be large also and in such cases there will be injury generally.

Q. Would you prefer to fix the age of marriage or the age of consummation?

A. It is not a question of preference. The age of marriage must be fixed. That will solve all the problems.

Q. Would you also fix an age for boys?

A. There is no necessity for fixing the age of boy. If the age of the girl is fixed generally the age of the boy will be a little more than the girl.

Q. You say after 6 months most mothers go away leaving their children. Do they feel when they leave their children?

A. They do not feel at all. They have no love for their children. I have seen numerous instances where they would like to kill their children. In some cases there may be some parental love. I have been keeping them for 6 months simply because I wanted that this love may be created. Invariably they will try to kill the children. In the night we sometimes leave the child quite healthy and in the morning we find that the child is dead. Opium can only be the cause of this.

Q. They never like to come back and see their children.

A. They do not. But after sometime they return in the same condition.

Q. Do you marry these girls and boys with one another?

A. We have not been able to make boys as higher up in society as we get husbands for girls. The husband that we get are of a higher society. The difficulty for them is to buy a wife and we don't take anything.

Q. Would people of any caste take them?

A. Brahmins, Banias all accept them with very little or no objection.

Q. Do you train all in one religion?

A. We have no special religion for them. We simply teach them to offer prayers to the Almighty.

Q. Do you give education to these boys and girls?

A. Yes, we do.

Mr. Mitra : You are for fixing the age of marriage at 15 as a compromise. Left to yourself what age would you fix?

A. 17.

Q. You are afraid of some harassment if these ordinary people are allowed to complain. Do you know that under the present law every person is entitled to report the breach of the law under 12? Is there any harassment now by bringing false complaints or cases?

A. No cases are coming in at all.

Q. Then why are you afraid that if ordinary people are permitted to bring these complaints or cases people will be harassed?

A. Because at this age there are no suits brought up, but as soon as the age is raised upto 17 say, that will be an age at which crimes are likely to be committed, people would be more induced to bring cases to court.

Q. If you fix the Age of Consent at a higher level, will it not be easy to detect?

A. Yes.

Q. There will be great likelihood of cases coming to court.

A. Yes.

Q. Will that not have a deterrent effect on the offender?

A. But at the same time a very bad effect on the morals of the girl. Our girls cannot remain chaste absolutely. At the age of 17 most of them may not remain like that, because we cannot train them up in the proper manner. If we raise the age to 17 there will be many inducements which it will be difficult for the girl to resist.

Q. You said you have never received a virgin Hindu girl.

A. Because there are very few virgins here. They go to Pandarpur. But such instances do happen, which it is very difficult to prove in a court of law.

Q. What is the age when you are afraid that the girls are likely to go wrong?

A. Above 16 girls may be spoiled.

Q. Are you for making two offences, marital and extra-marital?

A. If the marriageable age is increased there is no necessity for any differentiation between the two.

Q. If we fix the age for marital cases at 15 then extra-marital relations must be punished till 18 because it is after 18 that she can understand the consequences of her act. Is it not?

A. Yes.

Q. Would you like that marital offences be called by some other name than "rape", such as "illicit intercourse"?

A. I think rape is the proper term.

Mr. Bhargava : May I know the percentage of cases where men marry at an advanced age?

A. About 50 per cent. cases occur of widowers marrying at an advanced age.

Q. Is this both in cities and villages?

A. Yes.

Q. You said for some offences the panchayat fined upto an extent of Rs. 5,000. Is this both in cities and villages?

A. In cities the fine is less and the strictness is more in villages.

Q. Supposing you get the offer from A and you want to marry your girl with B what will be punishment for that violation?

A. Ex-communication.

Q. Supposing you do not want to marry at 18 or 19, will your caste disapprove of your act and give you some punishment?

A. No instance has occurred upto this time. Some punishment shall be given. Nobody would give me a daughter in marriage, or some such other penalty may be imposed. During the last few years there have been changes but before that we could not refuse. If we refuse one or two proposals we will be very much criticised.

Q. Have you put any penalty if the father of the girl does not make any proposal upto 16?

A. He can do anything he likes. Sufferers are only the poor boy and the girl. If the father of the girl is an educated man he may want that the betrothal should take place only at 14 or 15, he will have full liberty to do that. The father of the boy must accept the offer and the marriage must be performed when asked to do so by the father of the girl.

Q. May I know the name of the community?

A. Kharat Bania community.

Q. Will you kindly give the population of the community?

A. In villages there are about 25,000 persons. The population in cities is about 1,200.

Q. Have you got any conference of your brotherhood?

A. As a result of social progress we have been trying to make progress, but it is the elderly people who have got hold of the leadership and they do not allow any new things to come in. They are held once in five years.

Q. If they pass a resolution that the girls should not be married below 14 or 15, do you think, there will be any sanction behind this?

A. These resolutions will be thrown into the waste paper basket. Since 1915 we have been holding these conferences and we passed all those resolutions about going to foreign countries and some other matters and they are never given effect to.

Q. What age have you fixed for marriage?

A. We have not fixed any.

Q. Are there any educated people in your community?

A. There are so many.

Q. Has education permeated in villages?

A. The educated generally come into big cities for business or other work.

Q. I understand your community is spread all over Gujrat.

A. Yes.

Q. And then in places where there are many members of the panchayat people do not marry their girls before 14 or even 16 and they are not outcasted?

A. This is common to every community.

Q. I understand the force of the panchayat is generally confined to the villages.

A. Because the whole community is in the villages?

Q. You are of the opinion that these panchayats should be given the right of complaint also.

A. Those panchayats should consist of Hindus, Mohammedans and other educated people who could honour the law.

Q. Do you think these caste panchayats will accept them?

A. I think they could. It is a question of law.

Q. There will be no civil disobedience in your community.

A. No. Nobody disputes the law.

Q. I understood you to say that upto 16 there is no necessary harm if a girl gives birth to a child and left to yourself you will fix the age at 17, but you propose that it should be fixed at 15.

A. You must be content with the least, so far as the age of marriage is concerned. You will then avoid the row.

Q. Should I understand that in your opinion if 15 is fixed there will be sufficient protection afforded?

A. Yes.

Q. What are your grounds for saying that if the marriageable age is 13, the chances of finding the correct age would be less than if the age is fixed at 15?

A. The femur bone is ossified only at that age. Before that the lower portion of the condyle is separate. The bones are not bones in the true sense. At two ends there are cartilages and at a particular age this bone, femur, is ossified. Then at 15 the three molars have already come out. But it is very difficult to judge the age of girl from these facts.

Q. Are you of the opinion that upto the age of 15 the medical science will not be of much use, but after that there are some indications which show that the age of 15 has been reached?

A. Yes.

Q. You want to give the right of complaint to specially arranged panchayats. Will there be a legal obligation on them to report such cases?

A. If you give them the right of complaint this will be the best thing.

Q. Would you like some provision in the law that a man beyond the age of 35 or 40 should not be allowed to marry a girl below 15 or 16?

A. That will be a blessing in disguise if we get it.

Mr. Mudaliyar: I understand you to say that in 50 per cent. marriages males have second marriage. Is that in your community?

A. Everywhere in this city. That is because our girls die from early motherhood. Within 20 years they get pernicious anæmia or tuberculosis.

Q. Apart from child marriage and mortality on account of child-birth would you say that the population as between males and females is fairly equal?

A. I think it is. It is the rule of nature that men and women should be equal. If there is any difference it is hardly of $\frac{1}{2}$ per cent.

Q. What is the mortality of child mothers?

A. We have been seeing frequent deaths of child mothers. So many girls die who are under 20 and above 16.

Q. Do you realise that if there are 50 per cent. second marriages it means that 50 per cent. girls die before the age of 25? It is a very alarming state of affairs. Have you got any reliable statistics?

A. The girls who marry do die before 25.

Q. Is that a fact?

A. It is.

Q. What is the population of widows here?

A. There are numerous widows here. In every family there are one or two widows.

Q. Are many of them fairly young?

A. Yes.

Q. You said that if the marriageable age of girls was raised to 16 or 17 there would be some danger of immorality amongst girls. What is the state of morality amongst the widows now?

A. That thing is tolerated by society. It is common enough amongst all classes.

Q. Even amongst respectable classes?

A. It is more common amongst them because they have no other work to do.

Q. Do you think that if the marriageable age is not fixed, but the consummation age is fixed at 16, the law will remain a dead letter, or will it be effective?

A. Unless some provision is made to put the law into force the law will be a dead letter.

Q. Do you think that publicity is one of the things needed?

A. Yes; publicity and propaganda, and propaganda means everything.

Mr. Kankhaiya Lal: Are you in favour of fixing the Age of Consent at 16 and the age of marriage at 15?

A. If the age of marriage is fixed at 15, then I do not suggest any age for consummation.

Q. Supposing there is no marriage law, are you in favour of fixing the age of consummation at 16?

A. Personally I would prefer a marriage law, but if there should be an age for consummation I think it should be 15.

Q. In order to bring breaches of the law to light you have suggested publicity and propaganda and advocated that Panchayats might be asked to take up the work. Should these panchayats be cosmopolitan or of a communal character?

A. They should be cosmopolitan.

Q. In villages do you expect to find people willing to take up work of this character?

A. When we were given municipal administration we attempted to work it as best as possible and we are doing better work now. In the same way Panchayats will improve and do the work.

Q. Do you think it would be preferable if marital cases are heard not by the ordinary courts, but by matrimonial courts specially provided for the purpose consisting of a magistrate and two non-officials?

A. In my opinion public courts will be better, because they will have more publicity and any breach of the law will be better advertised. If these matrimonial courts hold the trials in camera then they will be of little good in preventing crime.

Q. Considering that these will be matters of a domestic character, would not publicity deter people from bringing these cases to light?

A. Yes.

Q. Would it not then be better in order to inspire public confidence that we might suggest some such measure as might suit the sentiments of the people and at the same time make us gain our object?

A. I have no objection to accepting matrimonial courts, though I think the ordinary courts will strike more terror amongst society.

Q. Would you make a marital offence compoundable?

A. No; because the whole effect of the law would then be lost, and there would be corruption and the cases would be hushed up.

Q. In order to avoid suffering to the wife, and to restore good feeling would it not be better that the offence might be made compoundable with the sanction of the court?

A. Such cases will not be many; and if one or two girls are sacrificed for the sake of the whole society, the result will be good.

Q. If there is no injury, do you not think that it would be a suitable case for compounding?

A. Even in cases where there is no injury I should think that the action was in itself brutal and should be punished.

Q. Will you tell us whether the medical profession will be willing to report cases of infringement of the law which they might come across in the course of their practice?

A. No.

Q. Even if there is an obligation cast by law?

A. I do not think they will do so because it will be none of their business.

Q. How can these cases be brought to light if the medical profession would not help us?

A. Some people can be bribed and the thing can be hushed up.

Q. If such cases are brought to hospitals or maternity homes or to private medical men or women for treatment, what objection can they have to report to the proper authorities?

A. Hospital people are sure to report such cases. But these cases generally go to private *Dais*, because they are of a suspicious nature.

Q. Is there no system of registration of *Dais* here?

A. No.

Q. Supposing there is a law requiring the medical profession to report offences of this nature, will they have any objection?

A. In such case they will comply with the law, but it will be only in the cities. The vast population is in the villages, where there are no medical men attending these cases.

Q. Are you in favour of a system of registration of licensed *Dais*, with power to withdraw the licenses?

A. It is a good idea, but the amount of education they have usually got is very low and they are mostly unscrupulous.

Q. Another suggestion has been made that in order to make the law effective we might make it obligatory on all people celebrating marriages to make a report of the marriages to a prescribed authority. What is your opinion?

A. That will be the best thing.

A. You cannot have a Tahsildar or Deputy Commissioner in all villages. There is no objection to your giving it to any officer who is present in the villages.

Q. Are they literate?

A. They can maintain registers carefully. They have been sufficiently educated for that purpose.

Q. Would you require that a certificate should be issued by the registering authority giving the particulars of the marriage, and the age, name and other particulars of the marrying parties?

A. That will be very good.

Written Statement, dated the 10th August 1923, of Mr. G. R. TALWALKER, Medical Practitioner, Ahmedabad.

1. There is no positive dissatisfaction so far as I am aware, but there is certainly an earnest desire of most of the educated men and women to see that a higher standard of age, before the consent of the girl could be considered as valid, be reached.

2. The sole fact that the largest number of married girls find themselves burdened with maternity before they could sufficiently realise the situation is I imagine ample reason for a real advance on the present standard.

3. Personally I have no experience or sufficient knowledge on this point to enable me to give an opinion. I believe that both seduction and rape are extremely uncommon among the upper classes society and among the lower classes I am afraid they will be found at ages well over twenty or thirty, for they lack in the intelligence or moral fear of consequences which are, as a rule, more developed with the more intelligent upper classes. In short age will be no guarantee against a temptation to such crimes. Therefore compulsory primary education and an attempt to improve the general understanding of all classes is I believe a remedy of far more potentiality than a penalising legislature which the vast majority of the populace never know as existing until the unfortunate victim to it suffers the brutal punishment and forthwith becomes more brutal and perhaps more cunning.

4. Advance of general education and understanding along with the growing strain of economic poverty have tended considerably towards a voluntary postponement of the marriageable age and I believe that the largest majority of the public are not even aware that there exists in the Indian Penal Code a section that penalises the consummation of marriage below a certain age.

5. Most girls in the upper classes of the Hindu Society attain puberty about the middle of the 13th year in Gujerat and Deccan. Among the lower classes six to nine months more would be the average age of menstruation.

6. Cohabitation before puberty must be extremely uncommon except in the lowest classes. Cohabitation very soon after puberty is, I think, the general rule but this is generally preceded by some religious performances and it is always with the approval of the caste people and so never a disputed thing and therefore there is no cause for seeking the interference of the court.

7. So far as I am aware there is no religious injunction ordering consummation of marriage before the appearance of the menses. On the contrary there is positive prohibition to consummate marriage before the menses have appeared. I do not know of any penalty prescribed for such an offence except a religious purification ceremony.

8. The Garbhadhan ceremony is generally performed in all the upper classes of Hindu Society and it is always performed after the appearance of the menses so that the consummation which comes after the Garbhadhan necessarily comes after the menses have appeared.

9. I do not consider the attainment of puberty as a sufficient indication of physical maturity to justify the burdening the poor girl-wife with the inevitable consequences of the consummation, I mean with pregnancy. But I cannot imagine how the Biological Urge in the man who is always from five to fifteen years older than his wife could be reasonably restrainable by any act of law when as is too common in India, and also too necessary if domestic peace is to be preserved, that the girl-wife submits to the man's will more through ignorance of the bad effects to her future health and also through a positive desire to be a good wife, than either through fear of the man or through a full sexual desire awakened in her.

I believe that educative propaganda both for the wife and the man will improve the understanding, resulting in the voluntary postponement of maternity which alone is the deleterious factor rather than the mere cohabitation or the psychological effects of the act.

10. In India or anywhere in the world I believe it is not the age that could be considered as sufficient consideration for the presumption of "competency to give intelligent consent" so much as the education, the understanding, and the intellectual atmosphere in which the girl grows. For example, most girls in the upper classes of Hindu Society at thirteen years of life sufficiently knew the consequences of a cohabitation, but most of these girls do not, I presume, have the least idea of the deleterious effects on their physique of early or repeated pregnancies. However it is quite presumable that these girls could visualise the ill-effects at eighteen years of life.

11. I am afraid I cannot give concrete instances of cases where definite harm has resulted from early pregnancy. Such cases are occurring by hundreds in every town in India. The large incidence of consumption in the young women all over the country is I believe a direct result of untimely drain on the already poorly developed girl by early maternity.

12. I believe that high infantile mortality and maternal disease is due in the first place to poverty, next after it it is due to huge and universal ignorance of personal hygiene and last of all it is due to early maternity.

13. I think that during the last thirty years, growing poverty of all classes in India and to a certain extent the spread of education has considerably improved public opinion of the upper classes in favour of late marriages while I believe that the vast majority of the educated classes have never bothered themselves over what Legislators and Law have recently prescribed for them or prescribed. It is the growing poverty, the greater tendency towards "every man for himself" and the difficulty met by the average educated man to find a job that will give him even a living wage, it is all these factors that made the parents thoughtful before undertaking the marriage of their sons and the sons unwilling to be fettered with a wife.

14. Women who have received some education certainly help to postpone the consummation of the marriage of their sons. However the large mass of the illiterate class has not yet realised the evils of early consummation and there is no hope of improving it by any legislation. Education and better understanding will certainly do much in improving their attitude.

15—16. I have no answer to these questions.

17. I would always consider the extra-marital offence as heavily punishable. The marital offence I would always investigate very humanly and punish very lightly. In the marital offence (where the husband has forced his will on his underage wife) we cannot forget the Biological Urge of the man in full possession of his youth and the traditional belief (almost common to all humanity all over the world) of man that his wife is his absolute possession.

Further, marital offences should always be heard in camera and extra-marital offences may be tried in open court with a limited audience.

19. I cannot suggest any.

20. Legislation fixing a minimum age for marriage is practicable and will bear fruit.

21. Strengthening of Penal Law can never eradicate an evil the danger of which has not been intelligently appreciated by the people to whom it is applied, while social reform has always educated the minds of the masses and secured the sympathies of the progressive element in a society. I believe in the liberal expenditure of money and intelligent human energy in making Social Reform the most rapid and effective a weapon in removing the existing evils in any society.

Oral Evidence of Dr. G. R. TALWALKER, Medical Practitioner, Ahmedabad.

(Ahmedabad, 15th October 1928.)

Chairman : How long have you been practising in the medical profession?

A. About 20 years.

Q. In your practice have you to deal with cases of girl-mothers at confinement?

A. If consumption can be taken—and it should be taken—as the result of early marriage, I have had a lot of cases because I specialise in the treatment of consumption.

Q. Do I understand the trend of your evidence is that you would rather have no legislation?

A. In my opinion legislation on these matters only helps to suppress the evil which it is intended to prevent and brings it out in some other undesirable form, and people commit offences in an underhand fashion.

Q. Between the two, fixing the age of marriage as in Sarda's Bill or fixing the Age of Consent, which would you like?

A. I would not like to have any law which penalises people in any way.

Q. But you say that legislation fixing the minimum age for marriage will bear fruit.

A. I think it will bear fruit because it will cultivate public opinion.

Q. Supposing we fix the age of marriage at 14 or 16, do you not think it will prevent marriages before that age?

A. In the Baroda State there is a law preventing marriages before a certain age, but people all the same pay the penalty and get themselves married.

Q. That is possible provided you assume that the penalty will necessarily be fine only and not imprisonment. Supposing there is imprisonment also?

A. I think it will be taking too stringent a step.

Q. In Sarda's Bill there is the penalty.

A. In that case I would not like any legislation.

Q. Then what do you mean by legislation fixing the minimum age for marriage?

A. Legislation simply to reprimand or warn. Penalising does not improve matters. It only keeps back people and they commit an offence in some direction. In Baroda they are actually paying the fines.

Q. But in our law there is fine as well as imprisonment.

A. Then that will be too severe a punishment. To imprison people for traditions and customs that have been in vogue for centuries will be too drastic a step.

Q. Do you think that the evil of child marriage is a very great evil affecting national interests?

A. Yes; I think so.

Q. What is your remedy for it then?

A. Education and popaganda. Economic conditions have already raised the age of marriage amongst the educated classes. I know from experience that 30 years ago educated boys were married before 18. But now boys are not married before 20 or 25.

Q. Do not the same economic conditions affect the lower classes? They cannot keep their daughters unmarried till late.

A. It is absolute want of culture and want of education or an intelligent understanding of the future. They look only to the immediate conditions. It is education alone that will do it.

Q. Do I understand that you are against any legislation either increasing the Age of Consent or penalising marriages?

A. These things are occurring automatically. Economic conditions are postponing the age of marriage. During the last 30 years it has risen automatically.

Q. If that is so, it means that there has been a certain amount of propaganda and it has been effective. Is that not a good enough reason for asking the others also to do the same by passing the law?

A. Asking is different and punishing is another thing.

Q. You might be aware that the Age of Consent was once 12 and then it was raised to 13. Would you abolish the law altogether?

A. The majority of the people do not know that there is an Age of Consent Law, and as such it has not affected the average man. In the same way raising it any further will not affect anybody.

Q. Would you therefore go so far as to say that the law might be abolished altogether?

A. The law is practically of no use. I have not seen a single case in which a man was punished for breaking the law of the Age of Consent, though I have reason to think that there are instances where the law is violated.

Q. Have you reason to believe that there is cohabitation of girls below 13?

A. Among the lower classes there must be.

Q. Have any cases come to your notice in connection with hæmorrhage?

A. No. And hæmorrhage does not necessarily occur with every connection before 12 or 13.

Q. In para. 9 you say that the deleterious factor is early maternity rather than early cohabitation. Do you know of any cases in which although cohabitation has taken place before 13, the girl did not become a mother and there has been no bad effect?

A. I think there are many cases I have come across like that, but I cannot give you details now. I have come across cases where girls have been cohabited with before 13, where no pregnancy has occurred, and no damage has occurred. Only the girl's precocity has increased. The damage is more due to early maternity.

Q. Do you think early maternity is a potent cause of making girl-mothers liable to diseases?

A. Girl-mothers used to be there even before the present generation. The thing is there are other factors which devitalise girl-mothers and maternity only an exciting cause. Some of the greatest sons of the country have been the children of girl-mothers, and even in the present day society if girls are properly looked after at the time of delivery and get 3 or 6 months' rest, the girls not only do not suffer, but even when they have borne a number of children they remain strong and healthy.

Q. During the last 20 years have you come across many such cases?

A. I have seen a fair number of such cases. I can remember about 50 to 100 cases.

Q. You say the large existence of consumption is the direct result of early maternity. Is it so?

A. Yes; it is so in the case of poorly developed girls. Want of nourishment, bad hygienic conditions are other causes. These prepare the girl for consumption and devitalise the girl. I know of a girl who was weak who became a widow, but after she became a widow she has improved considerably.

Q. What would you consider a safe age of motherhood of girls in this part of the country?

A. 18.

Q. Without detriment to the mother or the child?

A. 15 would be a safe age, but 18 is an ideal age.

Q. Supposing we allot 100 marks for all the causes that go to ruin girl-mothers, what number of marks would you give for early maternity?

A. About 25 per cent.

Q. I would put it in another way. Take the case of a girl in a better class where there is no question of poverty. Do you think that in those cases a child-mother suffers least, and the children do not die?

A. Very often we find that it is not due to early birth, but to ignorance on the part of the mother. In well-to-do families girls might know how to read and write, but it is not education in the right sense. That sort of education is never given in the schools. They do not know anything about the rearing of children. The average woman has no education in that direction. The elders are also ignorant. The child is wrongly fed and it becomes a victim to the ignorance of the grandmother rather than to the tender-aged mother. This is usually so both in well-to-do families and poor families. Medical advice in India is not usually sought and is not usually given because medical men have not devoted their energies to the science of infant rearing.

Q. If there should be a law penalising marriages, what age would you have for marriage of girls?

A. 14.

Q. And for boys?

A. Above 18. But at the same time I may say that it is not in the interests of boys or girls to be married at 14 or 18. Economic conditions are automatically postponing marriages, and they are going to exert more pressure.

Q. But are not economic conditions against the lower classes because they are for disposing of their girls early?

A. In their cases universal compulsory education would do good.

Dr. Beadon: Are you a general practitioner or do you get maternity cases also?

A. I am a general practitioner, and I do not get maternity cases.

Q. Are you specially interested in tuberculosis?

A. Yes.

Q. What is the percentage of girls suffering from tuberculosis as compared to that of boys?

A. The number of girls is three times as much as the number of boys.

Q. At what ages of the girls is it more common?

A. Between 18 and 25.

Q. Why is it greater amongst girls?

A. The general living of the people is very insanitary. Boys go out, and they have fresh air, sunshine and exercise, and have opportunities of having physical culture, whereas girls have no such opportunities. Also the boy has usually money in his pocket and get enough food whereas the girl is usually underfed.

Q. Do you think that tuberculosis is more due to economic condition than early maternity?

A. Yes. Economic conditions make them more liable to the disease, because I know that maternity in people well placed in life is not so much fraught with danger.

Q. We have been told that there is a very large number of men who cannot get wives, who do not therefore marry till a very late age and there are men who marry a second wife. Is that so?

A. It is true in the case of widowers, for they do not find girls to suit them so far as difference in age is concerned.

Q. Are there a large number of widowers here?

A. I think widowerhood has increased during the last 30 years and this has increased in proportion to the number of girls who have succumbed to tuberculosis.

Q. In the course of the last 20 years what has been the increase in tuberculosis?

A. I should think it is twice as much as it was before.

Q. In Ahmedabad do you meet girls becoming mothers at 14?

A. Those cases are very few. It is more common after the 15th year.

Mrs. Nehru: The reason you are opposed to this legislation is that people do not generally know anything about it.

A. The legislation as it exists to-day a large majority of people have no idea of.

Q. Is that the only reason why you oppose it?

A. No; I think that the legislation instead of improving them, only suppresses their natural tendencies or traditional habits and they find out other ways of avoiding the law. It is generally the unwary who become victims of the law, and the intelligent people find out devices and escape.

Q. But you have said that considering the standard of vitality amongst women there is a real necessity for an advance in the Age of Consent.

A. There is necessity, but my fear is that as soon as the question of age limit is settled, and the offence is made penal, people will find out methods of surviving them. It will be difficult to prove that a certain girl was below age.

Q. What measures then would you adopt to achieve the object in view?

A. General education and propaganda work, especially by means of cinema exhibitions.

Q. But propaganda has been going on for the last 100 years. Is the progress sufficient for us to rely solely on propaganda?

A. I am not myself satisfied with the progress made. But I do not think the law will make it more effective, I am absolutely sceptical about it.

Q. Do you not think that the law will work as a propaganda measure, even if it does not bring cases to light? Will not the very fact of the law being on the Statute Book be helpful?

A. The danger about it is that the ignorant and innocent people will become the victims of the law, while the clever people will always escape. Even if there are a number of prosecutions and they are published in the papers the illiterate and ignorant people will not know them.

Q. If special measures are taken to make the law known through the municipalities and the village Patwaris, will there still be danger?

A. If along with this steps are taken to carry on propaganda about cases that have been tried and convictions that have been made, it is quite possible that the law might have some effect. But I think a more pleasant and a more effective way of doing it would be to show people how they suffer because of their ignorance and how it is possible to eradicate these evils.

Q. Do you mean that public opinion should be created?

A. Yes; education on these things will probably do it more successfully and pleasantly than laws which impose punishment. The law of the Age of Consent does not usually touch the monied man but only the poor man.

Q. Do you think that in this part of the country public is so far advanced as to help social reform organisations to take up this work?

A. I think so. People have begun to feel the drawbacks in the social fabric and I think that everywhere there is a movement to postpone the marriageable age.

Mrs. Nehru: If the law is enacted and the right of complaint and prosecution is given to these recognised social reform organisations, will that work?

A. They will be tyrants. As soon as they become powerful they become tyrants. They misuse their powers.

Q. Not even two or three people in a big town can be found who can be trusted?

A. Everybody should be as good as anybody else, but it is human nature and we find that whenever a man is given a power that power is more often abused than properly used. There is nothing better than public opinion to prevent these cases.

Q. For the last 100 years we have been relying on public opinion and the result according to yourself is not satisfactory?

A. Because the public opinion has not been properly expressed; there has been no propaganda, people have talked in meetings and after that they have resorted to their old methods. No money has been spent and no money could be collected for spending on educating the ignorant people.

Q. You say in para. 6 that consummation always takes place with the approval of the caste people. Do you mean to say that each consummation of marriage in different houses takes place with the knowledge of the caste people.

A. I have answered from the experience of my own community. I belong to Deccan community and among us the Garbhadan ceremony is necessarily performed before consummation takes place and when this ceremony is performed almost all the nearest relatives and most of the caste people are got together and it is done in their presence. So it is practically with their consent.

Q. What is the practice in Gujerat?

A. I do not know.

Q. In para. 17 you say that marital offences should be punished very lightly. What is the punishment that you would prescribe for marital cases?

A. I suggest the creation of public opinion against such acts.

Q. In case such a law is made, what punishment would you suggest?

A. I cannot give any definite measure of that punishment. All I can say is that there are social circumstances and there are economic circumstances which come in the way sometimes. If there are extenuating circumstances in which the law has been broken then practically no punishment should be given.

Q. That is always done by the magistrates even now. They use the discretion given to them and sometimes punish by giving imprisonment till the rising of the court?

A. I will just give you an example. A few days ago I learnt of a case where a mother had a box of opium containing opium pills. She gave one pill to her child as usual and by mistake left the box on the ground. In a

few minutes the child swallowed half a dozen more pills and it died. This woman was prosecuted for negligence and therefore for man slaughter. Can it ever be imagined that a mother would kill her child. Why she should have been tried in such a case when her first statement should have been sufficient.

Q. What was the punishment given?

A. I do not know but one of my friends was watching the case and he was trying to get her off. Just imagine the trouble the woman must have undergone in being dragged to the court in order to prove her innocence.

Maulvi Mohd. Yakub: Have you come across cases of cohabitation with girls of less than 12 years of age by their husbands?

A. I have no information of any cases.

Q. Generally so far as you know cohabitation never takes place at 12?

A. It is very difficult to tell you the exact age limit. I have known of a case where I pitied the condition of the girl. She was so young and frail that I felt it was injustice. It is very unusual or seldom that a case of cohabitation before 12 occurs.

Q. Do you know that before 1925 the Age of Consent was 12?

A. I am most ignorant of the Age of Consent and therefore I do not know how many other people know about it. The Age of Consent Law is known only when an isolated case comes to the court through malice and not with a desire to bring the culprit to court.

Q. Can we not infer, as you have yourself said, that there are so very rare cases of cohabitation before 12, that is to say, due to the provision of law that cohabitation before 12 was a crime?

A. I do not consider cohabitation before 12 is common. When a man of 30 marries a girl of 10 or 12 he would not wait but police has not been able to find such people.

Q. Certainly, there must be very few if they are not traceable?

A. That I do not know. If such cases come to light they come to light through personal malice or some grudge of an enemy but not with a desire to bring culprits to justice or show to Government that their law has been violated.

Q. Personally your opinion is that the penal provision of the law fixing the age of consummation has been a dead letter?

A. It must be so long as widowers of 30 or 35 can find girls of 8, 10 or 11 as their wives.

Q. What other measure would you suggest to avoid this calamity of men of 30 or 35 marrying such young girls? Would you like a legislation prohibiting all men above 30 from marrying?

A. Difficulties are occurring every day; you cannot find out whether a girl is 13 or 13½. At present widowers do not find girls of 25 to marry. If they can find girls of 20 or 25 and if there were no censure attached to it people would marry such girls.

Q. You admit that there is a tendency among the educated classes to marry at an advanced age and it is as a result of public opinion among the educated people. What measure would you adopt to create public opinion among the uneducated classes?

A. I would educate them.

Q. Would you allow girls of tender ages to be ravished or to undergo troubles of girl motherhood, to have consumption and die for a century more before public opinion is created? Don't you consider this grievance as a serious offence? Would you not propose any prompt remedy?

A. I think this thing will only improve by more understanding among the people than by any amount of laws.

Q. How long will it take?

A. I do not know but certainly it has improved during the last 30 years.

Q. It will take another 30 years?

A. Yes.

Q. Is this your opinion about cases of injury to girls or about all crimes for instance thefts or robbery that these crimes should go when public opinion is created?

A. I do not think it is a fair analogy.

Q. Do you want to penalise dacoity?

A. Certainly.

Q. Don't you consider that such a crime on a girl of tender age is more heinous than dacoity or robbery? If such a law were made, do you think people will come forward?

A. In 9 cases out of 10 you will find that a case has been brought to light through personal malice.

Q. Supposing a preliminary enquiry is made by a magistrate before a case is actually lodged?

A. I do not make any difference between police and magistrate. I would prefer a preliminary enquiry by a caste panchayat.

Q. Do you want those powers to be given to heads of panchayats?

A. No, there is the danger that they will become autocrats.

Q. But they have been doing it in the past years?

A. I say it is desirable but these are the difficulties. If anything must be done I would certainly prefer a panchayat of the community itself to which a girl or a boy belongs.

Q. They may be invested with the power to punish them?

A. They may be invested with the power to enquire and if after that they have any grievance they have the courts of law open.

Q. If a case has been detected by a panchayat what punishment would you propose?

A. I would give warning.

Q. Who would administer that warning?

A. It cannot be administered; it will create public opinion. It should be published in the papers.

Q. What is the reason that you want to make a difference between cases of marital offences and extra-marital offences?

A. In marital offences the psychology is different. The man has been accustomed to it from the beginning of human existence. Even if you consider the condition of the animal world the male has always tried to overpower the female and this instinct persists in man with all the civilisation.

Q. You want to perpetuate this animal spirit?

A. With civilisation it will be less and less. When a man had inherited a tradition it is very difficult for it to get rid of that idea. In extra-marital cases the offence is against society and it should be heavily punished.

Q. You do not take the injury to the girl into consideration?

A. I keenly feel it but its remedy is proper understanding between the two sexes. For example, among the well-to-do classes you do not find one-tenth of crimes that you would find in the lower classes. You do not find cases of divorce among the cultured people whereas divorce may be extremely common amongst the poor classes.

Q. Would you like divorce to be made legal?

A. On that matter I am unable to give an opinion but there must be some case where the woman has a right to obtain divorce and this question will have to be considered. I do not absolutely deny that the present marriage conditions in India are not ideal but there are many in favour of these conditions and very few against it. If divorce were easily obtainable a section would wish it by mere strained feelings and it would bring on more trouble.

Q. Is there any social reform society?

A. There are social reformers in Poona. We are a very small community here and we are all social reformers in the right sense of the word and we are not social reformers in the wrong sense. Some 20 years ago the average social reformers picture was like this; that condition does not exist now in Ahmedabad.

Q. May I know at what age in your community consummation generally takes place?

A. Most boys at present do not marry before they are 25, therefore the girls do not marry before 16 or 17 and consummation takes place immediately after that.

Q. Are there any uneducated classes in your community?

A. Yes, but not here.

Q. May I know if any steps have been taken to educate them to create this opinion among the uneducated classes?

A. It is the economic burden that prevents boys from marrying early.

Q. You think no other propaganda is needed. Economic conditions will themselves prove a strong check?

A. It is not for the economic conditions but it is due to better understanding.

Q. What steps have you taken to promote this healthy atmosphere in your community?

A. We as a society have done nothing.

Q. You do not want to have any legislation and you would not do anything yourself. Is it so?

A. As the boys go to schools and colleges conditions would automatically improve and boys would be unwilling to be married early. If we can do anything it is to send the boys to colleges.

Q. Supposing the average social reform measures fail, what other measures would you adopt?

A. I would suggest anything except law.

Q. What other measures?

A. General education and propaganda.

Q. If these measures fail to achieve the object?

A. Then I can suggest nothing better.

Mr. Mitra: I understand you are against all laws of marriage or consent?

A. I am against all laws that will penalise a certain section.

Q. Even you are against the consent law so far as extra-marital cases are concerned.

A. No, I am for it.

Q. What age would you fix for it?

A. Above 20.

Q. You would like to have divorce laws, if possible?

A. Yes.

Q. But they already exist in several communities?

A. It is only among the upper class of Hindus.

Q. Among the lower classes?

A. I do not know much about law, but I find in practice that among some of the lower communities in Gujerat (Katra) a woman leaves her husband and marries another. These are allowed by custom not only in lower classes but among the upper classes also.

Q. Are you against enacting all social laws or are you only against the enactment of marriage laws because I understand that you are in favour of some sort of divorce law?

A. I am in favour of allowing certain divorces where the circumstances demand it.

Q. Do you want the help of the law or do you rely on public opinion?

A. I think I would take the help of the law in certain cases of divorce.

Q. You are not against social legislation in social matters when it is absolutely necessary.

A. My fear is that when once a law is made it creates difficulties.

Q. If you once admit that there are evils the best thing is to provide for it?

A. The difficulty is that it is misused.

Q. This applies to all laws. You admit the evil of early marriage and you are really in favour of late marriages and late consummation but your apprehension is that poor people will be victimised and richer people will escape?

A. Yes, that is my apprehension.

Q. Can you suggest any remedies for that?

A. I am not anxious.

Q. Are you afraid of personal malice?

A. Complaints are lodged in courts from purely personal malice and not from any sense of justice.

Q. As regards the present law there is paucity of cases and convictions and so at least in this case you cannot say that personal malice had much effect.

A. I think in most of those cases that have come to court personal malice was often the motive for bringing them to the court.

Q. You say that consummation should not take place before menses have appeared. Can you refer us to any authority?

A. I think Manu Smriti must be saying that. There is a practice that until Garbhadhan ceremony has not been celebrated the boy and the girl may not meet.

Q. Is it still common?

A. Yes, only in 50 per cent. of cases, but others do not care.

Q. Have you any reason to think that people do not like that kind of publicity?

A. Several people do not want publicity.

Q. In most of these cases in which you say the boy and the girl are both above the age of 16 the question is whether consummation occurs before the Garbhadhan ceremony?

A. After puberty Garbhadhan may or may not take place but in those cases they encourage to consummate the marriage without the Garbhadhan ceremony where people are cultured enough and do not get married before a certain age.

Mr. Bhargava: In para. 6 you say that Garbhadhan ceremony takes place in the presence of all the caste people and it is never a disputed thing. I understand there is a feast.

A. There is a religious ceremony in the morning and in the afternoon there is a feast. That is at the bridegroom's place and the girl is generally at the bridegroom's place.

Q. Is the girl brought in the presence of the people?

A. All the people who are there know it.

Q. In answer to question 7 you speak of biological urge. Am I to understand that biological urge is to be found in unmarried people and animals also?

A. No, it is in every human being.

Q. Do you not make any difference between unmarried and married people?

A. No. Man has learnt to curb his biological feelings but the urge is there.

Q. Up to a certain age females in many animals do not allow males to cohabit. You say then that there is possibly a desire to be a good wife which is responsible for allowing the male to have intercourse and this thing is wanting in animals.

A. Yes, understanding is wanting in animals.

Q. So among animals there is a natural instinct which is not transgressed by the male and in the case of man it is transgressed?

A. Yes.

Q. So far as biological urge is concerned you are in favour of curbing that urge?

A. Yes.

Q. Are there widow marriages in your community?

A. Yes, they are tolerated. Public opinion is gradually growing in favour of it.

Q. 20 years ago it was certainly against it and Widow Remarriage Act was passed and in your opinion the existence of that provision on the statute book was helpful in popularising this system of widow remarriage. Do you think so?

A. Yes.

Q. You say because it was permissive legislation therefore it has helped and any permissive legislation may help. Do you think then that sections relating to abduction and seduction relating to kidnapping are bad?

A. Public opinion is against it.

Q. You say that there is a tendency of the ages to rise. Do you also realise that generally people do not like that there may be intercourse between a man of 30 or 35 and a girl of 10 or 12?

A. Public opinion is against it.

Q. I understand that public opinion has even in India grown to this extent that in any case of injury whether to male or female people do not like child marriages. Is it so?

A. Yes.

Q. In your opinion the law should intervene at such a stage when public opinion is in favour of such a law.

A. No, public opinion feels the injustice of it and they are not prepared to have legislation for it.

Q. Have you made a tour round the city and villages to know what the public opinion is?

A. I do not think it requires to make a tour; even in your own dispensary you can learn a lot.

Q. In dispensary people condemn such an intercourse but do they condemn such legislation also?

A. Nobody likes such a law, people are against all penal legislation.

Q. May I take it that because you fear that people will be harassed you, do not like this legislation?

A. Yes.

Q. Can you tell me the number of cases that have been brought in Ahmedabad Courts?

A. I am not a pleader.

Q. Supposing this power of initiation of complaints is taken away from all individuals and is vested in a certain authority, for instance district magistrate, will that work?

A. That authority will be tyrant.

Q. Do you not think that authorities are tyrants under section 124A?

A. That is too big a question for me to answer.

Q. Can you conceive of any authority or any person who may not be an autocrat or tyrant to whom this power can be given?

A. The tendency generally is to make all legislation subversive to the will and understanding of the people.

Mr. Ramaswami Mudaliyar: May I ask if you are against all coercive legislation by Government and if you will look upon it as a crime committed by Government?

A. When people are against a particular thing and that Government passes that thing into law, naturally it is a crime.

Q. You realise there are coercive legislations which have to be passed by any civilised government and which have been passed by Government. Would you not like those laws?

A. No.

Q. Are you against an act for compulsory elementary education?

A. Yes.

Q. You would spread education by education alone.

A. Yes.

Mr. Kadri: Can you say the same thing about *Saki* and infanticide?

A. I approve of those legislations.

Q. Your fear seems to be that through malice false cases will be brought but you will be surprised if I told you that there have been cases of real injury and the criminals would not otherwise have been punished?

A. Unfortunately I have never heard of any such cases.

Q. On an average there are six such cases in a year which come to court?

A. They are too few to require legislation.

Q. You have considered it from one point of view and I have got another point of view. I myself tried a case where there was a Brahman of 30 or 35 who married a girl of 10 or 11 years. The man's mother was against this consummation, the neighbours were all protesting but the girl was being ill-treated from day to day. The result was she was a complete wreck and when she came to the court she could not walk. The husband said that I have paid Rs. 500 for the girl and I must have the money's worth. He was an enlightened Deccani Brahman and was a police patel and knew English. Would the law be suitable for such cases?

A. Such cases must be very few. If we legislate for every small thing there will be no end. I know one instance myself. I was myself driving in a carriage and a man was driving his car very rashly so much so that I was almost being killed. I took down his number and reported to the police and I was dragged to the court for that. I had to waste 3 successive days waiting on the judge to find his time to hear our case and after all he compromised with the boy when he said that he was sorry.

Q. Even in view of the concrete example that I gave you, don't you think legislation would be good?

A. No.

Mr. Kanhaiya Lal: You have said that legislation fixing a minimum age for marriage is a practical proposition. Suppose we are unable to fix by legislation the age of marriage, don't the interests of humanity require that we should do something to protect girl-wives otherwise?

A. These interests require many more things.

Q. But the others are not so urgent as this. You are probably aware that 20 per cent. of the infants die within the first year?

A. They die on account of ignorance and poverty and not on account of early motherhood.

Q. Would you be surprised if you are told that taking the weight of the babies born we find that in Calcutta the weight is 5 lbs. and 11 ounces and in Delhi we were told it was 6 lbs. and in European countries 7 lbs. and over so that our babies are much smaller in weight than babies in other countries?

A. It is due to other causes, the chief cause being poverty.

Q. Is it not due partly to early maternity?

A. Only 25 per cent.

Q. If so, is not desirable that we should not allow consummation before an age after which there will be no possibility of injury.

A. Consummation does not throw any burden but it is the maternity.

Q. But consummation leads to maternity. Is not some protection needed in the interests of girls in India?

A. I have already suggested the growth of public opinion by education.

Q. Would education among the girls secure the object?

A. Their unwillingness to become mothers will do much.

Q. You recommend compulsory primary education to relieve all these conditions. Suppose it is not possible for us to enforce compulsory primary education, would you as the next best thing take some other steps to protect the girls?

A. I would have compulsory primary education and if that cannot be done let it go on as it is now.

Q. Supposing we make the cases non-cognisable, would that not be a sufficient safeguard?

A. I do not know how that will prevent abuse, because the police is not the only institution; other men can do it.

Q. Suppose we provide a further safeguard that in every case the magistrate should hold a preliminary enquiry before the trial can be proceeded with?

A. I have no faith in coercive legislation. I think they do much more harm than good.

Q. The law relating to *Sati* and infanticide too?

A. They were sins.

Q. Is not the brutal treatment of wife a sin?

A. The idea is changing.

Q. Would the medical profession—men and women—be willing to co-operate and bring cases of breaches of the law to light?

A. I do not think the medical men will be willing to act as C. I. D. but they will certainly like to work as social reformers.

Q. Are you aware that in certain cases an obligation is placed on the medical men and women to report certain crimes and give information to the proper authority?

A. That is a very unfortunate responsibility and involves trouble.

Q. If there is a law, would you inform the police?

A. I will have to, but it will not be a very pleasant duty.

Written Statement, dated the 3rd August 1928, of R. B. GOVIND-BHAI H. DESAI, B.A., LL.B., Naib Dewan, Baroda.

Preliminary.

The Baroda State has its own Penal Code called The Fouzdari Nabaandh (Act 5 of St. 1952) which corresponds with the Indian Penal Code. Sections 333 and 334 of the Baroda Penal Code correspond with Sections 375 and

376 of the Indian Penal Code. The Baroda law was the same as that of British India till 1925, but about this time complaints were made by people to the effect that the Age of Consent allowed by law was too low and that though there were not regular complaints in Courts owing to family and other reasons, there were many cases of violation of the law in practice and the result was that females and their children suffered in their physical welfare.

About this time, Section 375 of the Indian Penal Code was amended and the Age of Consent was raised to 14 years in British India. The Baroda Government thereupon appointed a Committee with a view to ascertain public opinion and make proposals for amendments of the corresponding law in the State.

Most of the people of the old and orthodox ideas opposed any change in the existing law, but the reformers, whose number is growing from year to year, advocated much higher age even than that adopted in British India. Her Highness The Maharani Sahib of Baroda in her Presidential address delivered at the All-India Women's Conference held at Poona on the 5th January 1927 made many apt remarks, which may be quoted here with advantage. Her Highness said :—

"The Age of Consent should be made by law a minimum of sixteen. Many of the constituent conferences have done well in placing this question in the forefront of their deliberations. It is also now known that Sir Harisingh Gour, to whom the women of India owe a great debt of gratitude for his very valuable services, is going to bring the question of raising the Age of Consent inside and outside marriage to sixteen, in the next assembly. We have not merely to pass a resolution giving our wholehearted support to the proposed resolution of Sir Harisingh, but we have to organise a regular campaign of propaganda throughout the country in favour of the resolution with a view to getting it accepted both by the Assembly and the Government of India. I cannot urge you too strongly to advocate this by every means in your power, by persuading individuals, by holding public meetings in the Provinces from which you have come, by the formation of societies pledged to the cause of this and other allied reforms, and by urging your representatives in the Councils to take all necessary steps in this matter, to bring such a law into being with proper safeguards to see that it is enforced. On the reform in ~~the law~~ ^{the law} will, I believe, rest the success or otherwise of our ~~the law~~ ^{the law} and it is therefore that I recommend the Conference ~~the law~~ ^{the law} question in its deliberations."

A public meeting of ladies of the Bombay Presidency was also held on the 11th February 1927 under the Presidentship of Lady Tata. That meeting also passed a resolution strongly urging the Government to raise the Age of Consent of girls to 16 years and giving wholehearted support to the bill in question. Similar meetings were held in other parts of the State, and also in the neighbouring British territory.

A public meeting of ladies of Baroda was also held on the 14th of February 1927 with Shrimant Kamaladevi Ruje (Daughter-in-law of H. H. The Maharaja Sahib of Baroda) in the chair, where resolutions were adopted strongly recommending sixteen years as the Age of Consent.

Ahmedabad ladies, under the presidentship of Mrs. Sarladevi Ambalal also passed a resolution to have the Age of Consent fixed at sixteen years.

All these showed that the intelligent public opinion was unanimous in suggesting that the Age of Consent fixed by law was rather low and required to be raised.

The Baroda Committee after taking evidence throughout the State and giving consideration to the resolutions sent to them, were of opinion that eighteen years, being the age of majority in law, would be the proper age when a girl needs no protection of law against her own consent. They therefore proposed that the Age of Consent for those outside marriage should be eighteen years, but inside marriage it should be sixteen. The Baroda

Government after giving full consideration to the Committee's recommendations have fixed the Age of Consent to be fourteen years inside marriage and eighteen outside marriage.

With these preliminary remarks, I now proceed to reply to the Committee's questionnaire.

1. Yes, there was dissatisfaction in the Baroda State and I believe there is still in the adjoining British Zillas of Gujarat. No complaints are made to Courts even when the existing law is violated by husbands. Even in the case of outsiders, complaints are made only when there is a flagrant violation (e.g., rape on girls below ten). But still the feeling is there that it would be better if the age limit fixed by law is raised so that it may operate as a check and do some good.

2. (1) None.

(2) 14 is too low an age for giving consent for sexual connection outside marriage. The sense of giving consent with full knowledge of its consequences is not developed at this age. There is a vast difference in the giving of consent to a husband and to an outsider; and if the age in the case of husband is 14, it should be at least 16 in the case of an outsider, if not 18 as has been fixed in Baroda.

3. No definite opinion can be given, as people are always reluctant to lodge complaints in such matters. Moreover as the law has only been recently amended, it is too premature to gauge its effect, in preventing or reducing cases of rape outside the marital state.

4. Here also it is too early to expect any tangible results, but it can be safely said that raising the Age of Consent within the marital state to 13 years in British India and 14 years in Baroda has brought about a tendency to postpone marriage of girls and in the case of married girls postponing sending them to their husbands, as far as possible.

5. (a) Fourteen.

(b) But this age differs in different castes and classes of society. It is rather earlier in the higher castes and later in the lower castes as a general rule. Much depends however upon education and surroundings.

6. Cohabitation before puberty is not common; though girls are married before puberty, they are sent to their husbands after puberty. Such cases do not come to Court.

7. There is no religious injunction for consummation of marriage before puberty. There is a religious belief that marriage should be performed before puberty but there is none about consummation.

8. 'Garbhadhan' ceremony which is called 'Simant,' is performed five or six months after conception. There is no ceremony among Gujaratis anterior to the consummation of marriage on attaining puberty. Among Deccanics, some ceremony is performed on the first appearance of the menstrual flow.

9. Attainment of puberty is not a sufficient indication of physical maturity to signify consummation of marriage. Signs of puberty may appear at 12 or even at 11, but the physical development is not enough to justify consummation till the age of 14 to 16. If consummation takes place before 14, there is every likelihood of injury being caused to the girls' health and to that of their progeny.

10. Not before 18, and that is why the Baroda Government have fixed 18 as Age of Consent for outside marital state.

11. As a non-medical man, I can only speak from what I have seen round about me. I have noticed injury to the health of women and their progeny due to early consummation of marriage and at the same time, I have seen healthy women and healthy children, where there was no early consummation.

12. Yes.

13. Please see reply to question No. 1 and my preliminary remarks.

14. No.

15. No. Generally from the appearance of a girl, and copies of records of registration of births, school-registers, horoscopes, etc., age can be ascertained; medical examination would not be necessary in all cases. Ample evidence would be available to prove the age in case of dispute from other sources, indicated above.

16. Yes, because it is easier to guess the age of a girl at 14 than at 12 from general appearance.

17. Yes, the punishment for extra-marital offences would be as it is now; and for marital offences, the lower punishment provided in Section 376 of the Indian Penal Code.

18. Yes, marital offences need not be committed to the sessions. They may be tried by a First Class Magistrate with closed doors and may be committed to sessions when he thinks that more punishment than he could award is necessary.

19. There have been no cases of collusion, extortion or improper prosecutions to require any safeguards.

20. No. The Age of Consent for husbands and the minimum age of marriage for girls should be the same. It is on this principle that in Baroda we have fixed the age of 14 for marital consummation; and have in view the raising of the minimum marriageable age of girls from 12 to 14. With this object in view a bill has been published and suggestions have been invited.

21. I would rely on both. Mere provision in the Penal Code is not sufficient to secure the object in view. Progress of social reform by means of education and propaganda is very necessary.

Oral Evidence of Rao Bahadur GOVINDBHAI H. DESAI, Naib Dewan, Baroda.

(Ahmedabad, 15th October 1928.)

Chairman: For how many years you have been the Naib Dewan of Baroda?

A. 4 years.

Q. You will be able to tell us about the execution of the law in the Baroda State?

A. Yes.

Q. How many cases do you get, say in a year under this act?

A. I have enquired from Courts about the number of cases within the marital state and have been told that no cases have ever come to Courts. In such cases the complainants being the parents no cases are reported.

Q. Even when the age was 13 and 14 there were no cases reported.

A. No.

Q. But the fear inspired by law and the educative value must be doing some good. Some cases must have been prevented.

A. Yes.

Q. Have you reason to believe that there may have been cases below 13?

A. There must have been. The number is decreasing. In our State the Age of Consent corresponds to the age of marriage. Child marriages are now disappearing amongst the higher classes. Lower castes try to imitate the higher castes. 50 years ago the higher classes had a large amount of child marriages and the lower classes began to copy. So this custom is still very much prevalent amongst the lower classes. Everywhere the lower classes

are imitating the higher classes. In the same way among the lower classes there was the custom of widow remarriage but as the higher classes did not have it they also gave up this custom.

Q. This marriage law has been in Baroda for how many years?

A. It came into force in 1901.

Q. The punishment has all along been fine.

A. Yes. It was 100 rupees before, now it is 200. From the analysis given on page 76 of the report of the committee for examining the question of Preventing Early Marriages in the Baroda State you find that 1,391 were in favour of fine and only 390 were in favour of imprisonment.

Q. Besides the payment of a fine which is really added to marriage expenditure is there really not any deterrent effect of this law?

A. I think it has that effect. People will say that so and so has been punished; and this has some educative value. Besides the fine amounting to 200 rupees he has to suffer in other ways also. He has to engage a pleader, has to pay court fees and certain other incidental expenses. There are some who look upon this as an additional expenditure of marriage and some regard it as a present to Government. Early marriage has decreased and I dare say that gradually it will go on decreasing.

Q. Would you put that rather to education and propaganda and things of that kind?

A. Education also. All things combined have brought about this effect.

Q. You think the law has had some effect.

A. Yes.

Q. People who are against it realise that it is doing some good.

A. Yes. In our Legislative Assembly some of the elected members proposed an increase in the age, but we said let it be reserved for a later session.

Q. In answer to question No. 1 you have said no complaints are made to Courts even when the existing law is violated by husbands. Why is it?

A. That is my impression. It is because they think that it is not in the interests of the girl. The girl will be ruined. In that they do not resent it but think that this law serves no good purpose.

Q. In answer to question No. 20 you have said, it is on this principle that in Baroda we have fixed the age of 14 for marital consummation; and have in view the raising of the minimum marriageable age of girls from 12 to 14. Has this since been done?

A. Maharajah's sanction is awaited. 14 and 18 are recommended. It is likely to be sanctioned.

Mr. Kanhaiya Lal: Are you also conversant with the conditions in British India?

A. Yes. I belong to British Indian territory.

Q. Which part of British territory?

A. I belong to Nadiad. One of our difficulties in regard to these social laws has been that while there is no such law in British India the Baroda State has one. They say they have been handicapped because if the marriageable age is raised in the State and not in British India the chances of their getting suitable matches diminish. The bridegroom may be punished even though the marriage may be celebrated at the bride's place.

Q. But does your law not provide that if a man commits a crime outside the State he will be punished when he returns to the State?

A. That becomes very tedious.

Q. May I know what is the usual age for marriage in British India?

A. Here also it is increasing. Among the higher castes it is from 14 to 20. But in a small section of the lower classes where Nautras are allowed, it is reckless. It is anything between 5 and 12.

Q. Whom would you include among the lower classes?

A. Kolis, Ghanchies and Machhies.

Q. Is there a system of mass marriages taking place once in 12 years?

A. Among the *Kadva Kanbis* of Gujarat this custom of periodical mass marriages prevails. Their chief Goddess *Uma* is located at *Unjha* in the *Kadi District*, and the inhabitants of that place are supposed to be their leaders. Periodically usually, after a period of 10 years, they fix a marriage season and the whole community has to marry its children during that period. Naturally many child marriages take place under this arrangement. Even girls in the womb of the mother have sometimes been married under this arrangement. They say if the expected child turns out to be a girl she shall be married to such and such boy. In many communities in Gujarat there have spread what are called *Ekras*. This arrangement limits the power of selecting a good match and so indirectly stimulates child marriages.

Q. Is that practice now dying out?

A. It has almost died out. People have revolted against that custom. *Ekras* have also been discarded.

Q. Now do the marriages take place in the usual course without any particular year being fixed?

A. Yes.

Q. I would like to know what would you recommend for British India as the age for marriage of girls?

A. 14, because we have taken into consideration not only the conditions in the State but have also considered the conditions in British India. Later on it may be increased. I don't say it is ideal. But having regard to the fact that there is none, I recommend 14.

Q. What age would you recommend for consummation?

A. I would recommend the same what my State has adopted. I should like to go further if I could. This is a law of morals.

Q. What period should elapse ordinarily after the commencement of menses when consummation should be permitted?

A. I think 2 years, but I am not a medical man. Consummation is usually postponed and the girl is sent to the husband's house only when she is of ripe age.

Q. It is the *Goana* ceremony which postpones the consummation of marriage?

A. Yes.

Q. May I take it that the age of consummation here is generally 16 years.

A. It is from 13 to 15 when the girl is sent by the ceremony of *Annu*.

Q. What is generally the age of puberty?

A. 14 or 15 years.

Q. If you recommend that a period of 2 years should elapse after puberty before consummation may take place may I take it that you would fix the age of consummation at 16 or 17?

A. Personally I am of that opinion but for law-making purposes I would have 14. The law should not go in advance of society. It should follow society. Let society always give the lead.

Q. We have been told that a girl is not fit for child birth till she is 16 years of age and if consummation is allowed at the age of 14 serious consequences might result both to the girl and her progeny.

A. They will. I agree that if there is a child her own development will be arrested.

Q. In that case would it be an adequate protection to the girl if we fix the age at 14?

A. If you want to reach an ideal condition and if you think that that is practicable you can fix a higher age. I should go forward but it should be done after some time.

Q. You probably realise that frequent revisions of a legislation of this character is also harmful inasmuch as it revives the controversy each time and gives rise to fresh agitation.

A. It is true, but people are trained up in that direction and every time it becomes a sort of education to them.

Q. The complaint is that both in British India and elsewhere the law is inoperative. Can you suggest any method of making the law effective?

A. I find that the higher castes are awakened to their sense of duty. They have passed rules and regulations by which some of the old rules are being modified. They are holding caste conferences. The law is being made effective.

Q. Would you make the offence cognizable or non-cognizable?

A. Non-cognizable.

Q. To whom would you give the power to make a complaint?

A. Girl, or her parents or guardian and not to outsiders.

Q. Would you give the authority to make complaints to social reform organizations that may be existing in the country?

A. I don't think they will be able to do any effective work. Their sympathies will be towards the husbands.

Q. We have now got women's organizations growing up in the country in different places. Would you give that authority to women organizations?

A. As a trial we may give.

Q. Would you give that authority to communal panchayats also?

A. Not in Gujrat. I find there are always dissensions and factions. They are trying to cut each others' throats. They have a greed for power. Every panchayat tries to become the boss.

Q. Would you constitute vigilance societies to take up this work? They may be created as sub-committees of the municipal and district boards or as independent organizations.

A. They are desirable if we can create them. They will be helpful in bringing cases to light.

Q. Would you make them voluntary or would you give authority to the executive to nominate them?

A. They should be voluntary.

Q. In some States a law has been passed that no marriage should be performed unless previous permission has been taken from a prescribed authority? Would you like to have such a law?

A. That is a small State, Limdi. I do not approve of such a law. In Gujrat there are circles or *Ekras*. People are prohibited by their caste regulations from marrying beyond those circles. Those who break the custom are heavily fined. This ring is made according to areas. So many villages in this ring and so many villages in that ring.

Q. Would you recommend that after the marriage a report should be made to some prescribed authority who should maintain a register of marriages, giving the ages of the parties and their parentage?

A. That we have got in Baroda. The Child Marriage Prevention Act itself directs that every marriage shall be registered. The village patel does that, and if he finds that there is a breach of the law he sends a copy to the Magistrate and the man can be punished.

Q. Do you think that system has been helpful in bringing cases to light?

A. I think so. In the case of infringement the Patil sends an extract from the register to the Magistrate who then takes action.

Q. In your law regarding marriage you punish the parents of the minor girl as abettors. In the case of the breach of the Age of Consent law would you recommend that the parents of the girls be similarly punished as abettors?

A. But how are they abettors? Sending the girl is not an offence itself. Unless a clear case of abetment is made out, I won't punish them and making out of a clear case of abetment is very difficult.

Q. It has been suggested that in order to gain confidence and expedite the trial, marital cases might be tried by a matrimonial Court, consisting of a Magistrate and two non-officials.

A. It may be tried, but I think all over the country they will not work. Mr. Kadri: On page 72 of the Report I find that there have been no Mohammedans convicted. May I take it that no cases have taken place among Mohammedans?

A. They may have escaped prosecution. The more influential a man is the greater are the chances of escape. In fact it has been suggested that the higher classes should be punished more severely. These may have been included among the miscellaneous. Among the Mohammedans there are few cases.

Q. One of the suggestions made by the committee was that the assessors should be dispensed with.

A. That recommendation has not been accepted. It is true that they side with some party, but the Magistrate has the power of setting aside their verdict. 95 per cent. prosecutions have been successful. They have not succeeded in deluding us.

Q. Some people object to legislation on the ground that the law was only changed in 1925 and frequent revisions are bad. What do you think?

A. I think after 3 years I should like to raise the age to 16. I would disregard such opinion. I think the society is being gradually prepared. Great progress has been made, and the momentum once received will go on increasing.

Q. Will there be no resentment?

A. Some resentment there will be, but it should be discarded.

Mr. Mudaliyar: Under your law you have a power of giving exemptions in specific cases. Is it a fact that exemption is rarely given?

A. Yes. The exemption is only given when there are economic reasons and when the circumstances are such that if they are not allowed at an early age their chance of marrying will disappear for ever. If the parents are too old and want to see the child settled in life before their death, in such cases also exemption is granted. Not more than a dozen or half a dozen cases of exemption occur every year. Exemptions are decreasing.

Q. What is the marriageable age that has been accepted by the State?

A. The Committee recommended 16 as the Age of Consent and 14 as the age of marriage. 14 has been accepted for both.

Q. On page 78 of the report we find that out of those who were consulted 149 persons were in favour of fixing the Age of Consent at 13 and 391 were for fixing it at 16. May we take it that public opinion was fairly equally distributed between 13 and 16?

A. Yes. 14 has been accepted.

Q. You referred to the community called the Zalawadi Kanbis, in whose case exemption from the operation of this act has been granted for three years. What is their difficulty?

A. These people have recently migrated from other States because they believe the Baroda Government to be more stable. They say that all those who reside in Baroda territories are blood relations and they cannot therefore intermarry. They have to select brides from Zalwad. They say if the age is raised in Baroda only that will be a hardship to them. The field for selection will be limited and they may remain unmarried throughout their life. They have been therefore exempted from the operation of this Act for a period of three years. Similarly some exemptions were granted to the Kadwa Kanbis of Gujrat under the Infant Marriage Act. But a special law was made under which they could not give more than a fixed sum of dowry and they could only give a fixed number of feasts to the marriage party. The evils were thus minimised.

Q. There is another community in which mass marriages take place. As a matter of fact about 5 or 6 years ago you gave special exemptions to this community to have marriages at the age of six and eight.

A. That concession has now been done away with.

Q. Have you got birth registers?

A. Yes.

Q. Is this system of birth registration working satisfactorily?

A. This is made very easy. The village patel keeps the register.

Q. Is there an obligation on the parents to report the birth?

A. Yes.

Q. Is there any penalty provided for failure to report?

A. A fine of some 10 rupees.

Q. Have you found that the fine is frequently levied?

A. Very rarely.

Q. Have you got any register with reference to the Compulsory Education Act in which the age, etc., is given?

A. Yes. If the report upto the age of 7 is not made the patel has got the power of fining one rupee. The marriage register and this register can be compared and in case of difference the extracts are sent to the Magistrate, who then takes action. If there is any dispute these registers can be compared. One of the recommendations of the Committee was that it must be compulsory for them who register marriages to keep an additional column in the statement which they prepare showing 'the age which is entered

in the registers kept under the Compulsory Education Act, and this has been accepted.

Q. Do you think that this marriage legislation is fairly well-known throughout the State?

A. Yes. There is no village from which there has been no complaint.

Q. This Committee also recommended that propaganda work should be undertaken with the help of preachers, cinema films, and school lessons and rewards may be given in proper cases. Is that with reference to the age of marriage or the Age of Consent?

A. I think it refers to the first. This is in connection with the Devasthan Funds. Four preachers are maintained for the whole State. They go about and give lectures. They start *Katha* and incidentally speak about social problems. They have got all those *taplas* and other music instruments. They are paid from the Devasthan funds. Besides, the fine that we get under this Act and the Compulsory Education Act is spent for such public purposes. 5 per cent. is given to the Patels for collection, 35 per cent. is used for scholarships to backward classes and 60 per cent. is spent in building village school buildings. This is how the fine under the Compulsory Education Act is spent. The fine under the Marriage legislation is used for encouraging physical culture and for training nurses.

Q. And the expenses under this Act are met by whom?

A. By the State. In fact there is no extra expenditure incurred. No extra officer is employed.

Q. Was there a proposal that the local boards should try these cases?

A. We found that an overwhelming majority was in favour of judicial officers trying these cases. Local Boards even refused to take over primary education.

Q. The age for extra-marital cases was recommended to fixed at 18.

A. Yes.

Mr. Bhargava: In one of your replies to the questionnaire you have said there should be legislation and propaganda. Social propaganda I understand with regard to the law is absolutely necessary.

A. Yes.

Q. You have told us that this work is carried on by Pundits in your State. Is there any other method of social propaganda also?

A. Societies have been appointed. There are Yog Mandalies, school masters have been instructed to do some work in this direction. I think it is the moral duty of a teacher to do social propaganda work.

Q. Are these societies paid by Government?

A. Yes.

Q. Do you mean that in British India also the Government should take up this work?

A. Yes.

Q. Are these people who go about are paid from the General State Revenues or from any special funds?

A. We have got Devasthan funds for this purpose. These fines form a nucleus of that fund.

Q. Under the present circumstances, supposing a law is passed in British India, it is evaded by a man going in a territory where there is no law and performing the marriage there. Would you therefore like that there should be one law for the whole of British India?

A. I think the Indian States won't agree to that.

Q. You say there is a system of birth registration in Baroda and then there is a system of marriage registration. On whom is the obligation to report the marriage?

A. On the parents of the boy.

Q. Suppose a wrong age is given.

A. The man will be prosecuted. The Patel will compare it with the birth register and if he finds that the age is wrongly given he will send an extract to the proper authority.

Q. What exactly then is the use of the marriage register?

A. It is useful in finding the ages of the married couple.

Q. But the real check is the birth register because as you say you compare the age with the birth register.

A. The primary object is to have a register of marriages and the secondary object is to find out the age.

Q. Is there any penalty for not reporting a marriage?

A. Yes. The Thesildar can punish the parents of the girl and a fine upto Rs. 25 is provided for.

Q. Is the priest liable?

A. He is liable but there have been no cases where he has been punished.

Q. Has there been any tendency on the part of the people to bring false cases?

A. No.

Q. May I know then why do you restrict the liberty of making complaints to the parents and guardians alone? Among Hindus marriage is a sacrament and the parents are not over anxious to make the complaint. It is only the private persons who can take a dispassionate view of the thing.

A. There is no harm if these social reform organizations are given some powers to report.

Q. You want that these associations may be invested with powers of reporting and not the power of initiating the proceedings.

A. As a tentative measure they may be given powers of reporting.

Q. I understand that you like that the law should act only as a check and not that many cases should be reported.

A. Yes.

Q. Would you like that the marriageable age and the age of consummation should coincide?

A. Yes.

Mr. Mitra: In your Legislative Assembly you have passed a resolution that the punishment of the breach of the law of marriage should be imprisonment.

A. The majority of the non-officials were in favour of it, but it was not accepted.

Q. You say in paragraph 3 most of the people of the old and orthodox ideas opposed any change in the existing law. But when the law was passed I think there was no agitation amongst the orthodox people.

A. Then there was.

Q. What sort of agitation?

A. They said it was against shastras. Even now some say that the law has been enacted for the purpose of revenue.

Q. There were some exemptions in your marriage law, I understand and it has been recommended that these exemptions should be curtailed. Is it so?

A. Yes.

Q. You put the Age of Consent for extra-marital cases at 18 as that is the age of majority.

A. Yes.

Maulvi Mohd. Yakub: Can you give us the result of this law of maternity since it came into force? As a result of that is there any decrease in mortality?

A. It is too early to say but it necessarily follows.

Q. Are these matrimonial laws common to Hindus and Mohammedans?

A. Yes.

Q. Have you also got maulvis to preach?

A. No, it is only a tentative measure to see how people like it.

Q. Which of them is more effective—raising the age of marriage or fixing the Age of Consent?

A. I think Early Marriage Prevention Act is more important.

Mrs. Nehru: Do many cases of the breach of this law take place in villages? Are they more in villages than in towns?

A. Both in villages and towns they are about the same in the lower class of people. The communities in which remarriage is allowed there are early marriages but other communities are more thoughtful.

Q. In that case I should think there are many people who go to prison?

A. There is no question of going to prison, they are only fined.

Q. But poor villagers may not have money to pay their fine?

A. When they have money to spend on marriages they can afford a fine. I am not aware of a single case in which a man has gone to jail for his inability to pay fine. They call it a tax to the Sarkar.

Q. Has there been any increase in extra-marital offences after raising the age?

A. It is difficult to say but our belief is that they must decrease along with education.

Q. But I should think you wouldn't know anything about them if they did not come to Court?

A. I think in rape cases people hush up because girls have to be married.

Q. It was about extra-marital cases I wanted to know whether after raising the age to 18 crimes have decreased?

A. It is only a few months that the law came into existence.

Dr. Beadon: Are there a large number of cases in which the age of a girl is 14 and that of a man is 30 or 35?

A. This happens in the case of widowers but it is not a very large number. Disparity of age is looked down upon by the society also and public opinion is against it. Such cases are brought to light by newspapers and people get ashamed of their acts. If we can have such a strong feeling against other acts we shall have achieved the object.

Q. Can you give us any examples of cases within your knowledge of girls of 11 or 12 being married having suffered in any way?

A. I have seen many cases. I have seen girls having become wrecks. They develop consumption.

Q. During the last 3 years how many cases have you seen?

A. Many cases have come to my personal knowledge but they are decreasing now. Girls becoming mothers at 13 or 14 are rare.

Q. 10 years ago used they to be fairly common?

A. Not fairly common but occasional cases occurred. If girls are married at 12 they are not sent to their husbands' houses for two or three years.

Written Statement, dated the 9th August 1928, of Mr. MANGALDAS GIRDHARDAS PAREKH, Ahmedabad.

1. There is ordinarily no marked dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Penal Code. This is due to general illiteracy and conservatism of the people of

this country. The public opinion is however much advanced in favour of marriages after puberty or maturity and therefore it is evidently in favour of an amendment of the above Sections raising the Age of Consent even to sixteen outside the marital state. I am also of the same opinion.

2. As I shall state hereafter, I am in favour of raising the Age of Consent only outside the marital state, and my reason for wishing for an advance on the present law is to make the purview of the offence of rape wider than it is at present. If all illicit intercourse with a woman under sixteen outside the marital state is made the subject matter of the offence under Section 375, the fear of legal consequences may reduce the number of cases of rape in parts where they may be frequent.

3. The crime of seduction or rape are not so frequent in Gujarat. At the same time they are not unknown. I am not aware of the effect of the amendment of the law made in 1925, though I do believe it must make itself remarkably felt as the knowledge of the changed law spreads. I propose that just to the amendment in law are published in the Government Gazette, they should be, in the matter of laws governing social or religious subjects, be published in various vernaculars, and the copies of the publication should not merely be posted in important places at each village and town, but should also be read out and explained by the Talatis and other officers to the people.

4. It is difficult to say how far the amendment of 1925 with respect to the Age of Consent within the marital state has been effective. I personally do not wish for any further change in the law on this subject, as I believe that there are sufficient safeguards in this matter imposed by social customs. Even where marriage take place at or before 13 years in the case of girls, cohabitation of husband and wife follows after a year or so, when ordinarily they are in a fairly fit state for cohabitation. Social propaganda and increasing education of boys and girls will in course of time remedy the existing defects if any. Interference of law in matters of the relations of husband and wife is not advisable.

5. In Gujarat the girls attain puberty between 13 and 14 years. The time of puberty does not materially differ in Gujarat in different castes, communities or classes.

6. Cohabitation before puberty is rather common among backward classes such as Bharalas, Bhangees, Vaghris, Bhils, some Patidars, Rayputs, Mahomedans, etc. It is commoner soon after puberty among middle and even higher classes. Among low castes, cohabitation before 13 years takes place to some extent.

7. The practice referred to in this question is due to religious injunction and I am unable to cite the authority, as I have not studied the point.

8. The "Gaona or Garbhadhan" ceremony is not performed in Gujarat.

9. The attainment of puberty is a sufficient indication of physical maturity, but regard ought to be paid in special cases to the general condition of the health of the person concerned. I, however, prefer that two years should be allowed to pass between attainment of puberty and consummation of marriage. That would be to the benefit of the woman and her progeny. The woman's physique would then have a full scope for development.

10. In this country a girl's consent to cohabitation could be said to be free and with knowledge of its consequences, at the age of 15 to 16.

11. I leave this question unreplied.

12. It is a commonly accepted fact that early consummation and early maternity are largely responsible for high maternal and infantile mortality. They also lead to intellectual and physical degeneration of the progeny. They are, however, not the only causes of aforesaid high mortality. Ignorance of hygiene and the laws of sanitation and the economic poverty have a great deal to do with the heavy mortality.

13. There has been further development of public opinion in the directions mentioned in this question but I do not attribute that, so much to the

amendment of the law made in 1925, as to the progress of education and social work. Though the change is remarkable among the higher castes, it has permeated to the lower sections also to a very small extent.

14. The women rather do favour early consummation of the marriage of their children, but that is due to the influence of belief in religious injunctions.

15—16. I leave these unreplied.

17. The marital offences ought to be separated from extra-marital offences. In the cases of marital offences the punishment should be fine or simple imprisonment, whereas in the case of the other, it should be fine and simple or rigorous imprisonment. In the case of the former, the fine should not exceed Rs. 1,000 and imprisonment should not be for a term exceeding six months, whereas in the other case, the maximum fine should be Rupees 2,000 and the term of imprisonment three years.

18. Trials of offences within marital state should be as non-cognisable offences only and should be commenced by issuing a summons and not a warrant. These offences should be bailable and compoundable and should be tried by the Sessions Court or a District Magistrate. The trial of offences without the marital state should be stricter provided such offences are also tried by higher officers like the Sessions Court or the District Magistrate.

19. I have nothing in particular to suggest on the points raised in this question.

20. I prefer legislation fixing the minimum age of marriage, to legislation fixing a higher Age of Consent for marital cases. Personally I am not in favour of any legislation concerning either the intercourse by a husband with his wife or the age of marriage. I should like these problems to be governed by public opinion. I believe that the general opinion is in agreement with mine. Excepting some ultra zealous social reformers the general public do not like legislative interference in these matters.

21. My answer to question 20 shows that I expect the objects of the inquiry to be better served by means of education and social propaganda.

If the Committee desires to examine me orally, I shall be glad to present myself for such examination, provided I am informed about the date and place for examination well ahead.

Oral Evidence of Mr. MANGALDAS GIRDHARDAS PAREKH.

(Ahmedabad, 15th October 1928.)

Chairman: You are conversant with the text of the law of consent which is now in operation. Does your community and other communities at Ahmedabad know it?

A. People do not know it.

Q. Have you any reason to think that in your community or in other sister communities in Ahmedabad there is cohabitation below the age of 13?

A. No.

Q. Not even among the lower classes?

A. It may be; but in the higher classes widow remarriages are not allowed and marriages are often celebrated after the age of 13 or 14 or 15.

Q. Would you like to have a law fixing the minimum age of marriage?

A. There will be a lot of harassment.

Q. If it is non-cognizable there will be no trouble.

A. The age of 14 is not unreasonable.

Q. When does consummation of marriage take place generally in your community or in other communities here?

A. Even if there are early marriages, consummation does not take place before the age of 14 or 15. At that time even if they send the girls to their husband's houses, they are not kept long and go and come back till they reach the proper age. After confinement also, they are kept by their own parents for more than two or three months. These were natural restrictions by which the health of women was secured.

Q. What is the state of affairs now?

A. We do not marry our children before the age of 14 or 15 and of course they are sent to their husbands a little sooner because they are married at an advanced age.

Q. You have said that you are generally not in favour of legislation but if the marriage age is put at 14 and the offence is made non-cognisable you would not have any objection. But there are many other causes which lead to weaken the health of women and children.

A. There are worse causes than early marriage.

Q. In your experience have you come across girl mothers of 14 or 15 having suffered in body?

A. No, I have no personal experience but I may say that even women marrying at the age of 20 or 22 have died of consumption and other diseases on account of frequent pregnancies and cohabitation soon after delivery.

Q. But are early consummation and early motherhood one of the important causes of infant mortality?

A. No one will be against it. If marriages take place at an advanced age it will be more proper.

Q. I understand there are widowers in Gujerat who marry young girls who become mothers at 14 or 15. Do you know of such cases?

A. Yes.

Q. Do not the women and the children suffer in such cases?

A. In some cases they do, and in some cases they do not. If they are not wise enough they do suffer.

Q. Would you say that the percentage of each is half and half?

A. I have not thought over it. But I can cite examples of both mother and child being quite healthy.

Q. Do you know of cases where girls had babies before 14 and 15? What was their condition at the time of maternity?

A. Some were all right; some have suffered.

Dr Beadon: To what community do you belong?

A. I belong to the Vaishya community.

Q. What is the average age of marriage amongst girls in your community?

A. Now it is 15 and 16. Formerly it was 11 to 14.

Q. How many years since has it been 15 and 16?

A. Since the last 15 years.

Q. What is the cause of the rise in the age?

A. Because widows amongst the community are not married, the marriage is performed late so that there might not be many early widows.

Q. Is that the only reason why the age has risen?

A. There are other reasons also. People have come to realise that it is no good to have early marriages, and that puberty should be attained before marriage.

Q. Why is it so?

A. From experience they have learnt that early marriage is an evil.

Q. What are the evil effects of early marriage?

A. Early marriage leads to early maternity and early maternity leads to loss of vitality and health.

Q. Is it injurious to the child?

A. Not in all cases.

Q. From the point of view of the child, is it better to have a young mother or a mother aged 18 or more?

A. Certainly children will fare better with mothers of an advanced age. They will be taking better care of the children than mothers of 14 or 15.

Q. Do you think that children of adult mothers are stronger than children of young mothers?

A. It is only natural. Children of mothers of an advanced age are expected to be better than children of young mothers.

Mrs. Nehru: You said that formerly there were restrictions on account of which girls were not sent to their husbands' houses after delivery and very soon after marriage. Why have those restrictions gone now?

A. Now, because marriages take place at an advanced age, i.e., about 14 or 15, the couple love each other so much that they do not like to part from each other.

Q. Is early cohabitation which you say is common among certain classes of recent growth?

A. It is not of recent development. It has always been common. Wherever re-marriages are not allowed, people do not marry their children early, but soon after marriage the girls are sent to their husbands' houses. Also when the husband is married a second time, the girl is sent to him earlier than she ought to be.

Q. You say that in marital cases the punishment should be fine or simple imprisonment. What should be the maximum fine and the duration of imprisonment?

A. I leave it to the good sense of the Committee. I am not particular about the extent.

Q. You have mentioned certain safeguards in connection with the procedure in marital cases. But after the girl is 12 the safeguards exist even in the present law. The offence is non-cognisable and bailable. Do you want to have these safeguards even below 12?

A. Below 12 the law may remain as it is. But when the age is increased to 14 I want that the procedure should be such that there may not be any fear of harassment.

Mr. Mitra: Are you not for social legislation personally?

A. If the majority are in favour of social legislation, I do not mind it.

Q. Personally would you prefer that at least 2 years should elapse before the girl should be permitted to have consummation?

A. Yes.

Q. As regards marital cases we take into consideration the development of the body. But as regards extra-marital cases we have got to take into consideration the age of discretion or intelligence. Is that not so? In those circumstances do you think 16 is fit enough?

A. I have suggested 18. I said I will have no objection.

Q. A suggestion has been made that in marital cases where the consummation has not been attended with actual physical violence the punishment may be fine only. Do you agree?

A. I have no knowledge about these things and I would therefore leave it to the law makers.

Mr. Bhargava: You are in favour of raising the age in extra-marital relations to 18; and you say that the fear of consequences will reduce the number of cases. Are you of opinion that if there is a provision in the Statute Book it acts as a check?

A. Yes.

Q. Therefore if the marriage age or the age of consent is raised to 14 or 16 whichever is preferred by the Legislature do you think it will act as a sort of a check?

A. Yes.

Q. Even if these laws are not very effective, would you be in favour of legislating so far as consent or marriage law is concerned, and make the age 16?

A. Personally I am against legislation of this kind. I am not for fixing 16.

Q. Do you think that Government should undertake social propaganda of some kind; just as they do in the Baroda State?

A. If Government takes up the work, there is nothing wrong in it.

Q. Do you think that it is the Government's duty to some extent?

A. Of course they should undertake such propaganda.

Mr. Mudaliyar: You suggest that in marital cases the offence should be made compoundable. Would you suggest this absolutely in every case or would you have it in particular classes of cases only? Would you give a discretion to the magistrate to permit the compounding or not?

A. I have not thought over this matter.

Q. The difficulty is that the parties being closely related, pressure would be brought to bear on them to withdraw the case and compound it and not allow the boy to go to jail.

A. But if we make it non-compoundable it would be ruinous to the parties, particularly in cases where the injury has not been serious?

Mr. Kadri: May I take it that so far as the conditions in Gujarat are concerned, there will be no very serious opposition to legislation?

A. Generally marriages are not below 14, and in that case the legislation would not be opposed. But where marriages take place before that age they should be stopped. I do not think there will be much opposition because generally marriages do not take place before that age.

Oral Evidence of Dr. (Miss) D. J. MEDORA, Ahmedabad.

(Ahmedabad, 16th October 1928.)

Chairman: How long have you been practising here?

A. For nearly 6 years. I was in England for 2 years. I was Assistant Surgeon in the Sassoon Hospital, Poona, for two years. I was also sometime in the Motlibhai's Hospital in Bombay. I was in Bangalore in the Mission Hospital for 5 months. Since I graduated I have had about 10 years' experience.

Dr. Beadon: Where were you qualified?

A. In Bombay.

Q. How many cases of maternity had you on the average in a day in the Motlibhai's Hospital?

A. I was in that Hospital for about 8 months and I remember we had about 6 or 7 cases a day.

Q. Were the majority of cases Hindus or Muhammadans?

A. The majority were Hindus, because we had men students attending the hospital.

Q. What class of patients had you?

A. Mostly poor class people. We had sometimes better class ones too.

Q. What were the ages of the patients on the average?

A. On the whole there used to be a good many below 20. The average age was 16.

Q. Have you come across any cases below 14?

A. I have come across only one or two cases. 15 is common.

Q. In your experience do you consider that a woman having a child at 15 stands the strain of child-birth as well as a woman who has a child at 18 or 19?

A. No; the girl of 15 has no strength.

Q. Do you find that in the case of girls who gave birth to children at a early age, there was a tear of the perineum?

A. Yes.

Q. Was it necessary to stitch in every case in these girls?

A. I do not exactly remember; but I can say that there is greater need for stitching in these cases.

Q. What about the children in these cases? Are they fair sized or are they smaller in size?

A. I believe they are smaller. I have not prepared any statistics, and therefore I am not able to give a definite reply.

Q. Do you have both gynecological and maternity cases?

A. Yes; I have got my own nursing home. I started it a year ago. In my home I have had about 50 cases.

Q. What classes were they?

A. Hindus, Muhammadans, Parsis; all classes.

Q. Out of the 50 how many were below 15?

A. I do not think there were any below 15.

Q. What is the usual age of puberty of girls here in Ahmedabad?

A. It is usually about 12 to 14.

Q. In your practice do you get mostly first confinements or subsequent confinements in your Home?

A. I should think all kinds in equal proportions.

Q. Have you seen any case in which there has been damage to the mother from early maternity about the age of, say, 15 in which you could safely say that it was absolutely due to maternity?

A. I would not say it was due to early maternity; in such cases the parts are not fully developed. I have seen Atresia of the vagina follow in one or two cases.

Q. Have you seen cases of Atresia in elderly women?

A. No.

Q. Have you seen one or two cases in girls under 16?

A. I have seen two such cases. They are due to early pregnancies.

Q. Do you not think that the fact that you have seen two cases is very significant?

A. Yes.

Q. Is venereal disease very common here?

A. I do not think it is more common than you find elsewhere. I personally do not get such cases.

Q. Do you notice that there is a great amount of tuberculosis amongst your patients?

A. Yes; a very fair amount.

Q. In the last 6 years of which you have experience is it increasing or decreasing? ;

A. I have seen more cases lately perhaps.

Q. Between what ages of the woman do you generally find it?

A. Between 20 and 25. Sometimes below 20.

Q. What form is it; is it of the lungs or is it abdominal?

A. Mostly of the lungs and sometimes abdominal. To a certain extent it is due to a large number of pregnancies. I have seen girls of 24 or 25 having 7 or 8 children; that is because they marry young.

Q. In these cases do the majority of the children survive?

A. Very often most of them die because the mother is not herself strong enough to look after them. ;

Q. Is there very heavy infant mortality here?

A. The infant mortality here is very heavy. Mostly they die of want of care. The girl is so young that she does not know how to look after the children. I should attribute infant mortality to negligence due to want of knowledge.

Q. Do you find a girl of 15 or 16 is able to nurse or suckle her child?

A. The milk is sufficient to feed the child, but the girl's vitality is lowered in the end.

Q. Do you find cases of anæmia due to profuse hæmorrhage at labour?

A. There is no hæmorrhage in most cases, but still we find very bad cases of anæmia in most cases. I think it is due to sepsis of a low type.

Q. Would you say that even otherwise than when the child is badly handled by the girl mother, there is any particular damage to the child as a result of early maternity?

A. Personally I think the child would not be well-developed mentally and physically. I do not think the child will be well developed if the mother is 15 or 16 and is not properly built herself.

Q. Have you come across any cases in which there has been grave injury at the first coitus on young girls?

A. I have seen a few cases. I remember one case in which the parts of the girl were not developed and her bladder was ruptured completely, and there was constant dribbling of the urine.

Q. Was there a tear of the bladder?

A. Yes; and I could put my whole finger into it.

Q. What was the age of the girl?

A. Might have been about 16. The girl was brought to me for some other purpose. She had no child and the husband wanted to marry another girl. On examination I found that the whole bladder was ruptured. She had been maimed for life.

Q. How long had she been married?

A. About a year.

Q. Had she menstruated?

A. They said she had menstruated. But I think it must have been hæmorrhage.

Chairman: How far, do you think, does early consummation, apart from other causes, affect the woman or the child?

A. Till about 18 a girl is not developed properly, either physically or mentally, and if before that age her energies and attention are diverted on something else she is not developed either mentally or physically. Naturally her progeny are decidedly weaker in this respect.

Q. Amongst the several contributory causes that lead to the sapping of the vitality of the mother and affect the health of the children, what percentage would you give out of a hundred to early consummation?

A. I would give about 50 per cent.

Q. Supposing there are two girls and one is a mother at 18 and the other at 15; supposing there are the other adverse causes such as want of knowledge equally in both the cases, would you simply make a difference on account of age alone?

A. I would say that the vitality of the mother of 15 would be decidedly less, because in some people the mere shock of early consummation is so great that it affects the mental system entirely.

Q. Have you known of cohabitation of girls of 13 or 14 with elderly husbands such as widowers, but in which no children have come up, and yet the girls have suffered?

A. I do not remember of any case. But I think it would affect her all the same.

Mr. Kanhaiya Lal: Taking all these matters into consideration, what is the age you would recommend for marital cases for consummation?

A. I would suggest 18.

Q. Considering there is a great deal of opposition in the country against an advance of that character, would you be satisfied with a lower age? Under the present law the age is 13. How far can we raise the age with due regard to the situation in the country and without injury to the mother?

A. I would not go below 16. Personally I prefer 18. But because you say that 18 is not practical I suggest 16.

Q. Would 16 be a safe age?

A. 16 would be a safe age so far as injury to the girls is concerned.

Q. You say you had one or two maternity cases at 14. What were the weights of the children. Can you tell us whether the weight was below normal or about normal?

A. I do not remember now. The cases were recorded in the hospital. But I believe the weights were below normal.

Q. Can you give us any other cases?

A. I remember a case in Bangalore. The mother was a Muhammadan girl aged about 14. The child had both its legs crippled, but I do not attribute it to early maternity.

Q. Did the mother have safe delivery?

A. The mother was a very nervous patient. We had to give her what we call twilight sleep.

Q. Are such cases very often fatal?

A. I do not remember which was exactly fatal, but I remember one case in which the delivery took place between 14 and 15. The shock of the delivery was so great that the girl died within a month. Generally if the mother is delicately built there is great danger.

Q. Would medical men and women report cases of consummation before the prescribed age, if they are brought to them for treatment?

A. I would not like to report myself.

Q. In cases of poisoning you have to report?

A. I must report.

Q. Suppose the law requires you to report, then?

A. But there will be a good many difficulties.

Q. What difficulties?

A. These are delicate matters, and they should be done by the camera means. We should not allow anybody to discuss these things.

Q. Would you recommend that the trial should be in camera?

A. The reporting should be private and the trial should be in camera.

Mr. Kadri: It has been said that one of the results of early maternity is loss of vitality. Would you also attribute such results as insanity, hysteria or tuberculosis to early maternity?

A. I would certainly attribute hysteria to early maternity.

Q. One of our medical witnesses thinks that early consummation by itself does not produce any evil effects, but it is early maternity which produces the evil effects. Do you agree?

A. Even otherwise it would. Because I know of cases in which girls who had gone to their husbands have never again wanted to go back to them. They have been unnerved.

Dr. Beadon: What age were those girls?

A. About 15.

Q. How many cases have you seen like that?

A. 2 or 3 cases.

Mr. Mudaliyar: Supposing there is early consummation in one case, but there is no injury to the girl and there is no child-birth or the child-birth is not frequent; and supposing there is another girl who has married at a later age but has her first child at 17 or 18 and frequent child-births, which of the two girls do you think would be lower in vitality?

A. It is not an easy thing to answer. But one can safely say that early consummation and early pregnancy would create a very great shock and danger. I should think early consummation is a greater evil than frequent pregnancy.

Mr. Mitra: Do you believe that girls in India mature earlier than girls in other countries?

A. No; the difference cannot be more than a year or two.

Q. What do you think should be the ideal age for marriage?

A. I would put it as high as 25; because osteo-malacia which is very common in India is less likely to occur if the bones are properly developed. This is the view expressed by some people. But I have not had much experience on the practical side of the subject.

Q. What age would you fix for intelligent consent in extra-marital cases?

A. That would naturally depend upon the capacity of the person to give intelligent consent. I would put it at 20.

Maulvi Muhammad Yakub: Can you tell us what the age of puberty amongst Mussalmans is?

A. I believe about 14.

Q. What is the general age at which marriages take place amongst Mussalmans?

A. I do not know that.

Q. Have you come across any cases in which a Mussalman girl had maternity at an age below 14 or about 14?

A. I came across one case in Bangalore. The girl was about 14. I had no other case.

Q. Was it in the city or in the rural areas? Do conditions differ in the city and in the rural areas or are they the same?

A. I deal with patients who come to the city, and I do not know much about the villages.

Q. Do you get a good number of Muslim patients?

A. A fair amount.

Q. At what age do they generally have maternity?

A. Usually at about 16.

Q. Do you consider that a safe age for maternity?

A. I do not consider that a safe age. I would consider 18 a proper age.

Q. Do you think the raising of the age of consent within marital relations to 14 will not remove the evils?

A. No; that will not help.

Q. Can you suggest any method by which frequency of pregnancy can be stopped?

A. I do not think I can suggest any.

Mr. Bhargava: Is there any necessary connection between venereal diseases and early consummation?

A. I do not think so.

Q. Is tuberculosis very common amongst women here?

A. Yes.

Q. Is it more common amongst them than amongst men?

A. I do not deal with cases of men and therefore I cannot say.

Q. If left to yourself would you like to report cases in which there has been an infringement of the age of consent law?

A. No; I would not, because disagreements are likely to arise in the family.

Q. Suppose the law lays an obligation on the doctors to report would you then report?

A. These cases should not be reported in a public way but in a confidential way.

Q. How would you provide against non-reporting by lady doctors?

A. If the people who come to me know that I am likely to report they would give me a wrong age.

Q. Who can then find out the right age?

A. If the girl is properly developed, we can find out her approximate age.

Q. If you have a suspicion that the law has been broken, would you report?

A. Yes; confidentially.

Q. Supposing a lady doctor does not report, what penalty would you impose, and how would you enforce it?

A. If I am allowed to go my own way, I would tell the people who come to me that I would confidentially report, and if they are not willing, I would refuse the case.

Dr. Beadon: Is osteo-malacia common here?

A. Yes; in Bombay I found it amongst Muhammadan girls only. Here I find it mostly in Muhammadan girls and one or two cases amongst Hindus.

Mr. Kanhaiya Lal: You said that amongst Muhammadans maternity is common at about 16. If that is so, why is osteo-malacia common amongst them?

A. Amongst them it is due to the Purdah system and bad ventilation.

Q. Is it directly connected with early consummation and early maternity?

A. It is a disease of the bones and the bones are fully developed at 25.

Q. Do you mean that the liability to osteo-malacia is greater at 16?

A. Yes; because the bones are not fully developed.

Written Statement, dated the 13th August 1928, of Kazi Sayed NURUDDIN HUSEIN AHMED HUSEIN, Kazi of Broach.

1. Yes. I am inclined to believe that there is a general feeling of dissatisfaction with the state of law as to the age of consent as contained in Sections 375 and 376 of the Indian Penal Code.

the age of puberty would be valid (the age varying according to the climatic condition, circumstances, society or class). According to the Islamic Law the minimum age for attaining maturity is 9 years for a girl and 15 years for a boy. But such things are hardly found here, excepting in rare circumstances. But this is generally found in Tropical countries like Arabia, Africa, where girls of 9 or 10 years grow young, i.e., attain maturity. So it is needless to apply the principles of Western Countries here in India, where girls of 12 years generally attain the age of puberty.

5. The usual age at which, girls in this part of the country generally attain maturity may be taken at, from 12 to 14 years. But this difference is marked with regard to girls of different castes, communities, and classes of societies. It is sometimes due to the climatic influence also. The influence of wealth and poverty has greater effect on the development of a nation. The girls of wealthier classes, born of the union of healthy parents generally grow mature at an early stage, while those of lower classes, born of the union of parents in humbler stations, ill-fed, ill-clothed and brought up in insanitary conditions attain the age of puberty at an advanced age of 15 or 16 years.

6. (1) No. Not common before puberty.
(2) Yes. Soon after puberty in almost all classes excepting persons of refined societies and ideos.

(3) Yes. Before the girl completes 13 years in rare cases.
7. Yes. The practice of early consummation of marriage at puberty is attributed to more or less religious injunction.

The nature of that injunction, in my humble opinion is because of this, that girls attaining puberty, are naturally inclined to have cohabitation, so when they are not married at this stage, there is every danger of their being led astray by young boys, who are not their husbands while those of marital age will have less chances, such authority does not prescribe any penalty for its breach.

9. I do not think so. Girls of 16 or 17 years can be considered physically fit for the justification of such consummation. Marriage before 14 years of age at present, is considered premature among persons of refined thoughts and high society. Although it is premature, it may be advantageous either to individuals or race according to the different circumstances. Because some unavoidable circumstances make it incumbent upon parties to have early consummation of marriages.

10. At the age of 16 or 17. But it depends more or less on the climatic condition and geographical position of India as they vary much in the different provinces of India; and as this is very important in the building and development of the constitution and physical qualities of the nation the answer cannot be definitely given. Still from what experience I have I may presume that in India a girl fully developed at the age of 16 would be not so unwilling to consent to cohabitation realising the consequences. Because in India, the selection for husbands depends upon parents in marriage relationship, the married girls would be willing to submit to the wishes of their husbands with whom they are solemnly bound.

12. Yes. Partly to early consummation and partly to poverty and insanitary condition.

13. Yes. It is confined to intellectual class. Because the feeling is not generally roused on account of illiteracy of general public, yet among the poor class it is roused to certain extent owing to the evil effects of child-marriage and seduction of girls for immoral purposes.

17. Yes. The law as it stands is very confounding so they should be made more clear and understandable, if the marital and extra-marital offences were to be separated as different offences. The one relates to marriage and seduction in marital cases, who believes himself to be

innocent as he really is according to the prevailing custom of his society or community, but is guilty according to the penal law only for cohabiting with his own wife below the prescribed limit which the law forbids. He will be dragged, like an ordinary criminal before an ordinary Court of law, where he will be subjected to a public trial, exposing himself to a critical and close examination of a clever and witty lawyer. The wife also is in Court all the time, being treated with disgrace of all sorts. If a sentence is passed on the husband, the whole family's happiness goes away. Marriage, performed for the sake of worldly happiness, becomes a curse to them. While the other relates to extra-marital offences, which are quite different, require to be treated separately for plain reasons because this offence is against law, against society and against humanity. The man committing such an offence cannot expect sympathy from any man or society of any caste or creed. The maximum punishment prescribed in the law, seems to me quite sufficient for extra-marital offences, but it must be modified in marital offences reducing it from 2 to one year or with fine or both.

20. No. I do not think that penal legislation fixing a higher age of consent for marital cases would be more effective than legislation fixing the minimum age of marriage. Because social reformers of India have been working for years for the abolition of child marriages, yet they are not very successful as yet, and whatever success they may have achieved, it is confined to the advanced and higher classes. Because the poor class is very backward in point of education, hence the efforts of social reformers are not crowned with greater success, owing to the slow progress of education. Therefore the supplementary aid of legislation would be useless. According to my humble opinion such socio-religious customs should be left to its institutions to develop and progress through education and social propaganda by means of cards, pamphlets, etc., I think the people will be satisfied with the slow progress in social-reforms and to my humble opinion the latter will meet with the wishes of the general public.

21. Yes. Not by legislation. Because my personal opinion is that, in socio-religious matter such as marriage, it is safer to rely on the progress of social reforms by means of education and persuasion. There are of course two methods—legislation and persuasion. The former is simpler and swifter than the latter. However, the social legislation must be slow and cautious. It may be adopted when methods of persuasion fail, but from a survey of progress made by the social reform movements from its commencement to the present day, great success is found to have been achieved. Therefore, in conclusion I am inclined to believe that our whole society is not bad, nor are all our customs. Hasty legislation of this type may prove more injurious than the original one.

Oral Evidence of Kazi Sayed NURRUDDIN HUSEIN AHMED HUSEIN, Broach.

Ahmedabad, 16th October, 1928.

(Vernacular.)

Chairman: You belong to the Suni Jamat.

A. Yes.

Q. Are you the Kazi of Broach?

A. Yes. I am an Honorary Magistrate, second class.

Q. I suppose you know the conditions among the Mohammedans here?

A. Yes.

Q. You do not want the Age of Consent within marital relations to be raised?

A. No.

Q. Is it simply because it is a socio-religious question and therefore it should be left to the public?

A. Yes. So far as Mohammedans are concerned there should be no legislation of this sort.

Q. If there was a law for the whole of India would you like the Mohammedans to be exempted?

A. Yes.

Q. Is there any reason besides its being a socio-religious question?

A. No. I would suggest that the word *balugh* which means the attainment of puberty covers all ages and cases. If you legislate the word *balugh* should be put down in the case of Mohammedans and no specific age should be mentioned.

Q. You think if a girl of 10, 11 or 12 has attained puberty consummation may take place.

A. Yes, there is no harm.

Q. For fixing the age of marriage or raising the Age of Consent among Mohammedans religion only should be taken into consideration?

A. Yes.

Q. Do you want the Age of Consent to be raised?

A. No.

Q. According to the present law the Age of Consent is 13. Is that not against the Mohammedan law because a girl may have attained *balugh* before that age?

A. It is against religion, but the law has not been effective.

Q. In answer to question 4 you say "to make the law as to the Age of Consent more effective by further raising the Age of Consent to 16 in the case of married girls would in my opinion be of very little help because the question of marriage remains unsolved, therefore I am inclined to believe that penal legislation fixing even a higher Age of Consent would be far less effective". Would you like fixing the Age of Consent?

A. No. I have said that considering public opinion but not according to Mohammedan law.

Q. Would you favour the legislation fixing a minimum marriageable age?

A. No.

Q. You want that Mohammedans should be excepted but in the case of other people you want it to be raised to 14.

A. Yes.

Q. Can you say whether there is consummation before puberty among the Mohammedans?

A. Yes, there are several examples. These are among the uneducated and backward classes.

Q. Why do you want it to be raised in the case of other people except the Mohammedans?

A. The percentage of early consummation among Mohammedans is less than in other people.

Q. Can you say among what percentage of Mohammedans there is consummation before puberty?

A. I cannot say.

Q. In answer to question 6 you have said that in rare cases consummation takes place before 13 and it is not common before puberty. Why do you want the law if it does not take place?

A. It is according to the peoples' ideas.

Q. Why would you not like the age to be raised among the Mohammedans?

A. Among Mohammedans if something is to be done the consent or the Fatwa of the Ulemas is taken and they are generally against it.

Dr. Beadon: In answer to question 12 you say that partly it is due to early consummation and partly to poverty and insanitary conditions. Do you think that early consummation is a powerful factor or poverty is a powerful factor?

A. I think poverty has a greater effect. Early consummation has been taking place from ages.

Chairman: Do you mean to say that poverty and insanitary conditions have come into existence recently?

A. No.

Mrs. Beadon: Have you come across any cases of injury to the mother or to the child?

A. I do not know.

Mrs. Nehru: Do you think that the infant mortality is due to early consummation?

A. Yes it is.

Q. Is it not the religious duty of men to decrease this mortality?

A. Yes but we should not interfere in religion. They will understand it better by propaganda.

Q. But is not the law also a means of propaganda?

A. No.

Q. If it is necessary that a thing should be done whether it is effected by propaganda or by law it comes to the same thing. Does it not?

A. I prefer propaganda.

Q. If you cannot achieve that object by propaganda would you have the help of the law?

A. No, public opinion has progressed.

Q. If it is proved that Ajmai Umat are of opinion that early marriage is harmful and should be prevented, would you follow it?

A. If Ijmai Umat say something against the Quoran I would not follow it.

Q. If Ijmai Umat gave a fatwa that early marriage and early consummation was harmful would you agree to that?

A. Not necessarily.

Q. You have said in answer to question 4 that the law as it stands has not been very effective in protecting married girls against cohabitation with husbands within the prescribed limits. Why has it been so?

A. Because it is not known.

Q. If it is made known to the public will it be more effective?

A. No. It is a socio-religious question and they would not like interference in their religion.

Q. Whether they like it or not, will they follow it if it is enacted?

A. Yes.

Q. In para. 17 you say that the husband will be dragged like an ordinary criminal before an ordinary court of law where he will be subjected to a public trial, exposing himself to a critical and close examination of a clever and witty lawyer. If we eliminate the clever lawyer and constitute special tribunals of women or appoint special magistrates, then I suppose you wouldn't object?

A. No. Kazi should be given the power or matrimonial courts should be established like those of the Parsis.

Q. As regards punishment you have suggested 1-2 years or fine. Would you make a difference in the degree of punishment according to the ages of the girls?

A. Yes, but I cannot say anything about any age. I can only say before or after puberty.

Mr. Bhargava: In answer to question 21 you say there are two methods legislation and persuasion, the former is simpler and swifter than the latter?

A. I amend it, I think the latter is simpler.

Q. You have said in question 20 that an advance outside marital cases would be regarded a boon because it would be instrumental in raising the standard of marriage. You mean in extra-marital cases the age should be raised to 18?

A. Yes, it should be in the case of people except the Mohammedans.

Q. You think crimes will decrease on account of fear of law?

A. Yes.

Q. Some witnesses have suggested that in case of early marriage and early consummation the girl suffers and her progeny suffers and it is a national loss. Would you not like in these circumstances to have a law?

A. No.

Q. In answer to question 13 you say that among the poor classes a feeling is roused to a certain extent owing to the evil effects of child marriage and seduction of girls for immoral purposes. A large proportion of the Mohammedans like that the age should be raised?

A. It is only the educated classes who want an advance and the proportion of these classes is very small.

Q. You apprehend that if a law is enacted people will be harassed?

A. No, it will be an interference in religion.

Q. Then you say that the circumstances justify retaining the law of the Age of Consent as it is with regard to marital cases.

A. I want to retain the word *balugh*.

Q. If the law is not exact it will create difficulties.

A. You can take medical opinion.

Q. The medical opinion itself is not definite?

A. Then the judge should have discretion.

Q. You want the law, but you do not want the age to be specified and that the limit should be attainment of maturity. Don't you think there will be confusion in the courts?

A. I do not think there will be confusion in the case of Mohammedans. I will insist on the word *balugh*.

Maulvi Mohammed Yakub: What is your Arabic knowledge?

A. I have studied Hadis privately. I do not hold any degree or diploma.

Q. You are against fixing the age of marriage because it will be against religion?

A. Yes.

Q. If it is proved that according to Shariat an age can be fixed, would there not be any objection?

A. No.

Q. According to Surati Nisaiin Tafsir-i-Baizavi the age of *balugh* is 15 years.

A. But it is not for marriage, but for the management of property.

Q. If we take Baizavi as correct the age of 15 is given. Puberty of a girl is established by menstruation or nectoral emission and if none of these have taken place her puberty is established on the completion of

her 17th year. What is here advanced is according to Hanifa. Two disciples maintained the boy and a girl on completing 15th year are to be declared adults and Shafi concurs in this opinion. If according to this age is fixed at 15 years it will not be against religion?

A. It will be. Other circumstances have to be taken into consideration. My objection is that because religion has not fixed any age there is no fixed limit for marriage according to Mohammedan Law. Prophet has said that if you do not marry a girl before 12 you will be sinner.

Q. Can you produce any other Hadis where Prophet has said that it is necessary to marry at a particular age?

A. No, I have not studied. I have no knowledge of Hadis.

Q. The Hadis of Mishkat relates to a certain passage from the Taurat but the Prophet himself does not say in this Hadis that I also hold the same opinion.

A. By Nikah I mean maturity and marriage. This translation is of the Quadian and it is not a generally accepted translation of the Quoran. Are there any matters in which the Holy Prophet has not fixed any limit in the Quoran.

Q. Yes. There are certain matters for which no penalty was fixed in the Qoran or Hadis, but afterwards Khalifas penalised those acts. For instance there was no penalty fixed for drinking in the Qoran or Hadis but Khalifa Umar fixed a penalty for drinking. Do you consider it as interference in the religion?

A. No.

Q. By the same analogy do you not consider that a penalty may be fixed for early marriages in order to carry out the spirit of religion?

A. It is quite a different thing.

Q. Is any age fixed for consummation according to the Mussahnan Law?

A. It is puberty.

Q. Can you cite any authority?

A. I cannot say, I have not studied the matter.

Mr. Mitra: You are for fixing the age of consummation for non-Muslims at 14.

A. Yes.

Q. Is it true according to you that Islam prescribes no age for marriage?

A. Yes.

Q. And that is the reason why you say there should be no law for the Muslims.

A. Yes.

Q. You certainly know that there is a far larger number of Mohammedans outside India than in India. Muslim population is three or four times larger outside India.

A. Yes.

Q. Will you not be surprised to know that they have passed laws as regards these matters?

A. I am not surprised.

Q. Do you know the provisions of the laws enacted in Turkey, Afghanistan and Egypt?

A. I don't know. I have not read in papers.

Q. You say there is nothing in Islam fixing this age. But there is nothing either way. Neither does it say that the marriage should be performed at a particular age nor does it say it should not be performed at such and such age.

A. There is no limit fixed.

Q. According to Islam the punishment for adultery is stoning to death. That has been given up in all civilised countries. Do you consider that as an infringement in the Islamic law?

A. I think the practice is in vogue.

Q. The punishment for theft is cutting of the man's hands. That has been stopped at least in India. Do you think, that has been an infringement of the Islamic law?

A. It may be.

Q. As regards the Jumna prayers in the Qoran it is merely said that when you hear the voice of the Imam you should go and pray and give up ordinary work. But subsequently as they could not be held in villages there were some restrictions imposed. This has not been considered as an infringement of the Muslim Law.

A. No.

Q. When the age was fixed at 13 was there any agitation among the Muslim people?

A. No.

Q. Is Wakaf Law not an infringement of the Muslim Law?

A. That is misuse of law.

Q. But don't the Qazis misuse their powers sometimes?

A. They do.

Q. According to you what do you consider to be the age when Bibi Ayesha was married?

A. It was 7 years.

Q. Have you got any authority for that?

A. Yes. (The witness quoted from Mishkat Volume IV, page 96). The words of the Hadis are:—She said that the Prophet, may peace be on Him, married her when she was 7 and she was sent to the house of the Prophet when her age was 9 and her dolls were with her.

(The witness also gave another quotation from Iyani Commentary of Hidai.)

Q. Is there not difference of opinion amongst Mohammedans?

A. There may be, but I accept 7. I am not a Monvi, I am a lay man.

References handed over by Kazi Sayed Nuruddin Husein Ahmed Husein, Kazi of Broach.

Authoritative references quoted by Kazi Sayed Nuruddin Husein Ahmed Husein, Kazi of Broach, before the Age of Consent Committee, at the time of his oral evidence on 16th October 1928, at Ahmedabad, on the subject of Maturity (بلوغ) and religious injunction for performing marriage at the age of 12 (twelve) years.

صفحة ۹۷ مطبوعه مصر ردالمختار على الدر مختار في تلوير الابصار
جلد خامس - كتاب الحجر فصل في الغلام
بلوغ الغلام بالاحتلام والاحتلام والاحتلام والاحتلام والاحتلام والاحتلام
بالاحتلام والاحتلام والاحتلام والاحتلام والاحتلام والاحتلام
منهما خمس عشرة سنة - به يفتى - هذا عندهما وهو رأيته عن الامام و به
قالت الائمة الثلاثة وعند الامام حتى يتم له ثماني عشرة سنة ولها سبع
عشرة سنة

صفحة ۹۶ ملتقطات على المشكوة

مطبوعه لاهور باب الرلي جلد چهارم

و عن عائشة أنّ النبي صلى الله عليه وسلم نزل بها وهي بنت سبع سنين، وزفت اليه وهي بنت 'تسع سنين' وبعدها معها و مات عنها وهي بنت 'ثمانى عشرة' رواة مسلم

ايضاً

صفحة ۹۷ باب الرلي النكاح

و عن عمر بن الخطاب و أنس بن مالك عن رسول صلى الله عليه وسلم قال فى التوراه مكتوب من بلغت ابنته اثنتى عشرة سنة و لم يزر بها فاصابت اثماً فائمه ذلك عليه رواهما البيهقى و فى شعيب الايمان

مطبوعه نورالكشور عين شرح هدايه

كتاب الحجر صفحه ۸۰۰ جلد ثالث

عن عائشة رضى الله عنهما بلغت على راس تسع سنين و (وي أنّ النبي عليه السلام بنى بها حين صارها تسع سنين و معلوم ان النبا عن رسول الله صلى الله عليه وسلم لا يكون الا المتوالد و التناسل ولا يتحققان الا بعد البلوغ فعلم انذلك بلوغها انتهى -

Written Statement, dated the 8th August 1928, of Syed NAWAB ALI, M.A., L.T., F.U.B., Principal, Bahauddin College, Junagadh.

1. Yes, among the educated classes.
2. The following circumstances justify making an advance on the present law.
 - (1) Need of proper education of girls specially among the Muslims.
 - (2) Physical deterioration.
5. Usually at the age of 12, but the kind of nourishment, general health and environment affect the above limit.

7. Among the Muslims marriage is a religious injunction and celibacy is discredited. There is no definite age limit for marriage. Under special circumstances minor's marriage ceremony may be performed, but the consummation of marriage is recommended after *Balugh* the period of which according to *Ummas* varies from 12 to 17 (Imam Abu Hanifa extends it to 18). Sexual intercourse was then left to the good sense of the married pair guided by the elderly members of their family. On the authority of *Hadis* they were taught that the chief object of marriage was *Awlad* *Salah*—(i.e., bringing up of children of sound body and mind fit to serve God and His creatures). It should be noted that the law of Islam in such matters is elastic and judged in the light of the teachings of the Prophet which among the Muslims in India is in reality un-Islamic and detrimental to the spirit of the Quranic teachings.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage which should be allowed at the age of 14.

10. For intelligent consent to cohabitation with a due realization of consequences, the age required should be between 16 to 18.

11. I have seen one sad case. A Muslim girl of a respectable family was married at about 12. At the age of 14 she gave birth to a male child who proved to be a epileptic and died at the age of 20 after continual painful sufferings. A second male child was born who too proved to be a cripple and died at the age of 6. The poor lady at last died of consumption at 34.

21. I prefer to rely on the strengthening of the penal law with reasonable exceptions which I leave to legal experts.

Oral Evidence of Sayad NAWAB ALI, Principal, Bahauddin College, Junagadh.

(Ahmedabad, 16th October, 1928.)

Chairman: How long have you been principal of Bahauddin College?

A. For the last 5 months. Before that I was at Baroda College for 25 years.

Q. Do you think the marriageable age amongst Mohammedan girls in Baroda territory and in this part is the same or similar?

A. I am a resident of Lucknow, but have been here for the last 26 years. I do not know much of this place.

Q. Would you be able to say anything at all about British territory?

A. Yes, I can.

Q. Do you think you are correct in giving the age of puberty as 12?

A. It is usually at the age of 12.

Q. I understand Mohammedan girls attain puberty late and they marry late?

A. I have no experience.

Q. You have said that the age of intelligent consent is somewhere between 16 and 18. Under the Mohammedan law a girl must be able to give an intelligent consent and you seem to recommend consummation at 14?

A. Yes.

Q. Age of intelligent consent is 16 to 18; would you like a girl becoming a mother without knowing about it?

A. No.

Q. Supposing you have had to legislate and you were told that 16 is the least safe age for motherhood, so that her health and that of her progeny may not suffer, would you permit cohabitation at the age of 14?

A. There will be other circumstances which will have to be taken into consideration, *e.g.*, environments and the family in which she has been brought up. Medical view only will not suffice.

Q. You mean the opinion of the orthodox people and the conditions that they have inherited. Is that what you mean by other considerations?

A. It is not only orthodox opinion.

Q. Would you say that 14 is the reasonable age?

A. Among Memons—supposing they want to go to Japan, which they have to do, the girl has to be married because they would not come back before 4 years. If they do not allow marriages after that there are certain consequences detrimental to the wife and to the husband.

Q. For these exceptional cases would you like an exemption clause in the marriage act as it is in Baroda?

A. Yes.

Q. If there is an exemption clause would you be satisfied?

A. Yes.

Q. *In that case it will be safe to enact a law penalising marriages below 14 or 16. What age limit would you put?*

A. I have no objection if you fix a reasonable age for marriage and once a marriage is performed there should be no restriction.

Q. When are marriages performed generally among the Mohammedans?

A. It is about 12, 13 or 14. Sometimes even later at 20 or 21 among the Sulemanis.

Q. Have you seen any girl mothers before 14 or 15?

A. I have seen only one case.

Mr. Kanhaiya Lal: Are you in favour of fixing an age of consummation?

A. No. When an age of marriage is fixed I would not like to have the Age of Consent.

Q. Supposing we are not able to enact marriage legislation, would you be in favour of fixing the Age of Consent at 14?

A. I would like to have age for marriage fixed.

Q. It is doubtful whether the legislature would adopt that law or whether it would pass through both Houses?

A. When you pass through that stage then I will be able to say. That would interfere with our custom and husband will have no right even after marriage.

Q. It has been suggested generally that 20 per cent. of the children born of young mothers die within the first year in India. Don't you think that is very excessive?

A. It is due to other causes. *e.g.*, insufficient food.

Q. But weak progeny may result where the mother is weak or very young and gives birth to a child when she herself is of tender age? That may be one of the causes?

A. Yes.

Q. We have further been told that the number of girls that die between the ages of 10 and 15, and 15 and 20 is generally double the number of boys. It is said that early maternity is responsible for this high rate of mortality among the women.

A. I have not considered this question.

Q. It has further been pointed out that the weight of babies born of tender mothers is much less than the weight of babies in other countries

for instance at Calcutta the weight is said to be 5 lbs. 11 ozs., in Delhi it is 6 lbs. while in England it is 7 lbs.?

A. It is better to have genius than giants.

Q. If these facts are brought to our notice how can we meet the situation? Can you suggest remedies to improve the conditions?

A. In India the masses are affected by the religious beliefs.

Q. The medical opinion is that the bones which support the uterus are not ossified completely till the girl is 25 years. Doctors say that if there is early consummation and child bearing girls may receive injury. Don't you think this situation requires remedy?

A. It does require remedy.

Q. Should not the legislature in the public interest take the question and fix some age, so that consummation might be prevented before that age?

A. But not to disturb their religious feelings.

Q. Are you aware that the legislature has already disturbed the existing doctrines or dogmas in order to protect the public interest, for instance Sati has been stopped?

Q. But those are clear cases, but in such cases they would not depend on the medical advice.

Q. According to Mohammedan law the age of majority is 15, but the British Indian law does not permit any person to sell his or her property until he or she is 18 years old. Similarly in the interest of protecting the girls from brutal treatment by husbands or from damage to her person or to the person of her progeny would you not take some steps to protect the girl?

A. In that case educate the masses.

Q. In other words we must wait till education has produced its effects?

A. If you depend on medical advice and no other reason then I shall educate the people first.

Q. Is it not incumbent upon us in the public interest to take some steps to stop this undesirable state of things?

A. The masses are not educated. People will have no objection to the Age of Consent being fixed at a sufficiently reasonable figure. You can raise the Age of Consent to 14.

Q. You think that would be acceptable to the people generally—Hindus and Mohammedans?

A. Particularly the Mohammedans must be persuaded. If you can persuade the mullahs among the Mohammedans it is very easy for the masses to follow.

Q. In addition you suggest that there should be some propaganda in order to induce the people to comply with the law?

A. Yes.

Q. Will you be able to tell us what measure we should adopt in order to make the law effective?

A. It should be left to the community.

Q. Would you be in favour of village panchayats or town panchayats to look after these cases and bring them to light?

A. Among Mohammedans if they have Kazis appointed for the purpose and if they bring cases to light it will be all right.

Q. Would you be in favour of individuals being appointed Kazis to look after these cases. Supposing we appoint two or three Hindus and two or three Mohammedans or local panchayats or caste communities would they be helpful?

A. For the Mohammedans I would like to have Kazis.

Q. Would you like that these marital cases should go for trial to the ordinary magistrates or would you like that they should go to the matrimonial courts constituted for the purpose?

A. Not before the magistrates.

Q. Would you like to have a purely non-official body to try these cases or should it be a combined body?

A. In marital cases I would have a purely non-official body.

Q. Would you make these offences compoundable?

A. Yes.

Q. There might be cases in which girls receive severe injury and they might die. Would you therefore make the offence compoundable with the sanction of the court or without its permission?

A. I am not going to provide for all the emergencies at this stage.

Q. Supposing we have a law fixing the minimum age of marriage, at 14 would you recommend that all marriages should be reported to some prescribed authority giving the names of the marrying parties, the names of their parents, their dates of birth, so that these entries may be of use when needed?

A. If that can be done it will be better.

Q. On whom would you place the obligation of making the report about these marriages?

A. Among the Mohammedans they can go to Kazi.

Q. But Kazis are not the only people who celebrate marriages there are Nikahkhans who celebrate marriages also?

A. I would recommend that they should be punished. They should solemnise the marriages and nobody else.

Q. Would it not be an interference with the Mohammedan law if it is suggested that none should be allowed to celebrate marriages except the Kazis? According to the Mohammedan law anybody can celebrate the marriage if the parties are consenting.

A. I do not think so. The Kazis are the guardians of the law: they are living in civilised society.

Q. Should Kazis maintain these registers?

A. Yes.

Q. If other people celebrate the marriages they should make a report to the Kazi?

A. Yes.

Q. As regards the Hindus you have no suggestion to offer?

A. If the masses are prepared to listen to the advice that child marriages should be stopped then early consummation will be stopped.

Mr. Kadri: What according to the Mohammedan law is the age of puberty?

A. Puberty of a boy is established by his becoming subject to nectoral emission and the puberty of a girl is established by menstruation. If none of these take place puberty is established on her completion of 17th year. According to Abu Hanifa the two disciples of Abu Umar maintained that a boy and girl on completing the 15th year are to be declared adults. There is also one report of Abu Hanifa to the same effect and Abu Shafi concurs in this opinion.

Q. It is also reported that he established the puberty of a girl at 19th year. Some people discuss that this puberty is said to be completion of the 18th year and the beginning of the 19th year.

A. I can quote another passage from Baizavi. There also 15th year is mentioned. According to Baizavi's commentary the authority in Quoran is Sura-i-Nisa, 4th Sura. It says they reach the age of *balugh* either by nectoral emission or completing the 15th year. "In our opinion as has

been said by the Prophet that a boy or a girl completing the age of 15 is entitled to property and they may be liable to punishment." It is 18 according to Abu Hanifa.

Q. May we take it that according to Mohammedan law 15 is the generally accepted age of puberty?

A. Yes, that is the *Fatwa*.

Q. One of our witnesses has said that general agreement of the Ulama is that the age of puberty is 9. Would you agree with that opinion?

A. I do not think it is a unanimous opinion. I do not agree with it. It may occur in Arabia, but it does not occur in India.

Q. According to your view, would marriage legislation interfere with religious principles of Islam?

A. If the effect of legislation is proved to be good to the community.

Q. You have said that *nuladi-suleh* cannot be procreated until the father and mother are of good age and from the medical view we are satisfied that children born of the mothers below a certain age would not be strong in body and mind.

A. Our Ulama and masses would not be satisfied with the laws. We must look to the circumstances. The age for puberty is 6 to 18 years.

Q. It is generally observed that the earliest period of puberty with respect to boys is 12 years and with respect to girls 9 years. That is earliest, but the generally accepted doctrine is 15 years. Is it not?

A. Yes.

Q. I put it again that according to the Islamic principles accepted by Ulama if a marriage legislation is provided it is done in the interest of India?

A. Yes.

Q. It is for the good of the progeny?

A. Unfortunately people do not understand that. I think it is the duty of leaders to make them realise the dangers that they are exposing themselves to.

Q. Similarly, would you support any legislation calculated to the procreation of healthy children?

A. Yes.

Q. When we are satisfied that children born of mothers who enter maternity before 13 are not fit to be good citizens would you advocate raising the age?

A. Yes. At the same time I would say that you should give them proper education.

Q. Islam is not inelastic, it is a progressive religion.

A. Yes.

Q. So that all legislations calculated to strengthen our progress will not be objected to by true Mussalmans. Am I right?

A. Yes.

Maulvi Mohammad Yakub: Are you an M.A.

A. Yes.

Q. Are you also author of some books on Islamic history?

A. Yes, *Life of the Prophet and Comparative Study of the Holy scriptures*.

Q. You have given some time and education to the study of Islam and Quran?

A. Yes.

Q. You say in your statement that among the Mussalmans marriage is a religious injunction. I thought it was more a civil contract?

A. Not civil, but it is a religious contract.

Q. Have you seen Mr. Amir Ali's Mohammedan Law. He says among the Mussalmans nikah is more a civil contract.

A. When it is enjoined in the Quoran it cannot be a civil contract.

Q. The performance of the ceremony is in the nature of a civil contract. There are all the ingredients which form a civil contract. There is a proposal, acceptance and consideration.

A. You may call it a civil contract ratified by divine will.

Q. You say there is no age limit fixed for marriage?

A. No.

Q. From the different factors and different Hadisis can we not infer that an age is fixed for marriage for instance you say when they reach the age which is provided and that age you say according to Hadis is 15. The result is that from Islamic law we find an age for marriage and it is 15 for the girl. Is it not logical?

A. If you depend on the Hadis and if it is *Sahi* Hadis.

Q. Can you tell me any Hadis which is contrary to this Hadis. Don't you know there is *Hadis* where Prophet says that if my deed is against my word you must accept my word and not the deed. Does it not mean that even if a certain act was performed during the life time of the Prophet, but it is against his Hadis, then Hadis will be taken in preference to the deed?

A. It is a debatable question. It is not necessary that the Hadis which is quoted there is correct. I say that which has been definitely put down. The word is *balugh*.

Q. If you approve that that Hadis is correct then we find the age of marriage from it?

A. I am doubtful about the genuineness of Hadis.

Q. Do you attach weight to Hadiya as a book of Islamic religion?

A. Yes.

Q. Do you think Hadiya is an authority which is not correct?

A. There may be other Hadises quoted where no age limit is given.

Q. From the other Hadis which you have quoted that the chief object of marriage is *auladi saleh*—bringing up of sound body and sound mind and from medical evidence we find that girls of tender age are not fit to bring forth *auladi saleh*. Then connecting this view with this Hadis cannot we safely come to the conclusion that the age of marriage according to Mohammedan law comes to 15?

A. Something more is required. That Hadis which is quoted here should be rightly understood when comparing to other books.

Q. If there is no Hadis against this, then can we arrive at an age as given by Islam?

A. Yes.

Q. Can you give us that Hadis in which it is stated that the object of marriage is *auladi saleh*?

A. I do not remember.

Q. Is it from any book?

A. *Sia Sateh*.

Q. If a marriage is performed anywhere in which there is very little chance of *auladi saleh*, then according to Mohammedan law the object of marriage fails and if we make a provision according to law to fix an age for marriage which would give us *auladi saleh* then you would be following the injunction of Islam in spirit.

A. Exactly.

Q. You said that the law of Islam in such matters is elastic. Can you give us any example or instance?

A. In the Quoran itself you find there are certain laws laid down, then they were repealed afterwards when circumstances were against them.

Q. Supposing there is no provision about a certain matter expressly in Quoran or Hadis. Is it not permissible for Government of the time to make a provision to meet this contingency accordingly?

A. By certain enlightened experts of that particular religion.

Q. You cannot say in all cases whether there is any definite provision of Islamic law. To make a provision for that would be interference in the religion?

A. Unless it is against the Islamic teaching. So when a girl has attained the age of 15 or about that and any legislation in this direction if it is enacted after consulting the Ulemas will not be an interference in the Islamic religion?

A. I do not think so.

Q. You are also of opinion that the attainment of puberty is not a sufficient indication of physical maturity to justify consummation?

A. Yes.

Q. You have said that you will be in favour of fixing an age for marriage?

A. Yes.

Q. That will not be according to you an interference in the Islamic law?

A. I do not think that we are taking into consideration all those circumstances which require that there must be some age limit and to avoid certain evils there will be no interference.

Q. Is any age for consummation fixed according to Islamic law?

A. No.

Q. Following the same analogy if we fix the age for consummation it will also not be an interference in the Islamic law.

A. No.

Moulvi Muhammad Yakub: Besides Quoran, Hadis and Fikah there is another source of Islamic Law, Ijma which means consensus of opinion. If you do not find anything in the first three authorities the Ulemas will meet and decide about the matter.

A. But unfortunately under the present circumstances Ijma is very difficult here in India. How many are there in India, who can be regarded as qualified to give opinion? How many are there who have spent their life in the study of religion and religious laws?

Q. There are thousands in India who devote their whole life in service of God. But what will you do if there are no instructions about a thing in Quoran or other authorities?

A. It will be better to consult the Ulemas of Afghanistan and Arabia.

Q. It means some sort of Ijma.

A. But in India you will find it difficult.

Q. By Ijma do you mean that there should be consensus of opinion of the theologians throughout the whole Islamic world?

A. Yes.

Chairman: Would you include Turkey in that?

A. Yes.

Moulvi Muhammad Yakub: If we find that the theologians of Turkey, Egypt and Afganistan are all unanimous on certain reforms about matrimonial laws and other progressive things, can we infer that the Ijma is on this point and have those measures, those laws, in India?

A. We have to look to our own conditions.

Mr. Mudaliyar: What would you fix the Age of Consent in extra-marital cases?

A. According to Islamic law it is considered a sin at any age.

Q. But taking into consideration that the present age is fixed at 14, what age would you suggest?

A. According to Quoran no age is fixed. It is a sin for a woman to cohabit with a stranger at any age.

Q. But taking the practical side of it, apart from all what religion says, what age would you suggest?

A. There is no age limit. If a woman consents to cohabit with a stranger she should be punished irrespective of age.

Q. Would you have a law punishing the woman also?

A. Yes.

Q. Supposing the man alone is to be punished what age would you suggest then?

A. Before 13.

Q. Do you think that a girl of 13 is able to give intelligent consent at that age? Do you think she knows at that age what strangers are? Don't you think she may be overpowered at that age. Don't you think it would be physically impossible for her to resist the man?

A. She knows what strangers are at that age. I have not quite followed you.

Q. What I mean is this. Supposing in this 20th century the man alone is to be punished and the woman is let free whatever her age, what should be the age of the girl within which the man should be punished?

A. When she reaches the age of puberty, i.e., 15 years.

Q. But you know according to the present law the age of majority is 18 years. A girl cannot dispose of her property before she is 18. Don't you think that that should be the proper age for extra-marital consummation.

A. No.

Q. But don't you realise that if you fix the age at 15, i.e., the age of the girl within which the man will be found guilty if he has cohabitation with her you are really encouraging that act instead of preventing it?

A. In that case I will not give any age. My object is to prevent these irregular connections altogether.

Q. But in this imperfect world women are exempted. If women were also to be punished that object would be attained. But I want you to assume that there is no possibility of penalising the women. Supposing you were to say that whatever the age may be if he is a stranger he should be punished you will achieve your object. If that is not possible don't you think your object will be more attained if you fix as high an age for the girl as possible?

A. For strangers there is to be no age limit.

Mr. Mitra: Do you belong to the Sunni sect of the Mohammedans?

A. Yes.

Q. And are you a Hanifi also?

A. Yes. I belong to the Sufi sect of the Hanafis.

Q. Is it a fact that about 90 per cent. of the Indian Mohammedans belong to the Hanifi sect of the Sunnis?

A. Yes.

Q. Am I correct in saying that according to the Hanifis Abu Hanifi is the highest authority?

A. Yes.

Q. And where the views of Abu Hanifa agree with his two deciples Imam Yusuf and Imam Mohammad that is the law for the Mohammedans.

A. Yes. But there are exceptions. If a man leaves his wife and does not look after her for a certain period, Imam Hanifa fixes no limit, but his opinion will not be considered. We will in that case follow Imam Malik.

Q. But mostly you follow it.

A. Yes.

Q. Here we find that so far as the disciples are concerned they are for 15 years and Imam himself is even for 18. So we can take it that 20 per cent. of the Mohammedans will be agreeable to accept 15 as the Age of Consent. This is agreed to by both the disciples.

A. Yes.

Q. There are four sources of Islamic law, Qoran, Hadis, Ijma and Kyas. You say it will be difficult to ascertain Ijma here in India. We can then leave it to Kyas to ascertain the law. If we have Koranic authority no other authority is necessary, but if Qoran is silent, we have to go to Hadis but if both are silent we go to Ijma, but if that is not possible you have to go to the fourth source, Kyas. Is it not?

A. Yes, according to the Hanifis.

Q. And Hanifis form 90 per cent. of the Mohammedans.

A. Yes.

Mr. Bhargava: According to Mohammedan law it is not permissible for any woman who is not married to have any sexual intercourse.

A. No.

Q. So you are in favour of penalising all sexual intercourse, so far as an unmarried girl is concerned.

A. Yes.

Q. As the present law stands, if a girl is below 14 any person having sexual intercourse with her can be punished, but if she is over 14 and the girl consents the stranger cannot be punished. Now the question is that if this age is fixed at a higher limit, say, 18, then more persons having sexual intercourse between 14 and 18 will be punished. If you go still further more will be punished. If you do not raise the age all these strangers will be immune from punishment. Will you agree therefore that this age may be raised to 18, so that more persons may be punished?

A. I am not going to fix any age limit.

Q. You will go as high as possible.

A. Yes.

Q. You said that Qazis should be asked to keep a register of marriages. You mean there should be a Qazi in every village or one Qazi may be in charge of 5 villages or 10 villages.

A. Details can be worked out later. If Qazis do not maintain these registers they should be punished.

Q. So far as these registers are concerned what would be the use of keeping these registers?

A. They will be useful for finding out the age, and the Qazi as he will know religious law, can help us in certain cases. He can explain the law.

Q. This you can do without the aid of the register also.

A. It is a matter of detail.

Q. Are there any birth registers at present?

A. Yes.

Q. Who keeps them?

A. The municipal committee or the district board.

Q. So far as accuracy is concerned birth register is the only register which can be called reliable. Births are registered as soon as they take place for 20 years before marriage. If there are any marriage registers the

person who performs a marriage will go to make a report and in the fear of being prosecuted he may give wrong ages. Is that not likely?

A. I only made a suggestion. If you find it difficult you may have some other method.

Q. So far as determining age is concerned will this register be of any value?

A. At least for the Mohammedans the appointment of Qazis will do good. These Qazis may also keep register of births. They must be given some work.

Q. You were in favour of giving some powers to unofficial judges, so far as marital cases are concerned.

A. Qazis can try these cases.

Q. Are the British Courts not capable of judging people in marital cases? Will you agree to have trained Qazis as arbitrators? These cases have been tried from 1860 onwards by the ordinary courts.

A. And therefore they should continue to decide such cases? I say they should not be tried by ordinary courts. In my opinion marital cases should be tried by Qazis.

Q. At present if there is any dispute between husband and wife all those matters are brought to court. If the girl is very young will you make any difference?

A. That question is so very delicate that I would not like it to be brought before the court. It may have other consequences. I will leave it to the village pauchayat, the Qazis or any non-officials.

Q. You say that the marital offence should be compoundable. Will you set any limit to it?

A. I would not fix any age limit. It will depend upon the circumstances of the case.

Q. Will you go so far as to say that if the girl is below 12 even then the offence should be compoundable? Would you like that the power should be given to Court whether to sanction it or not?

A. I have not considered that question about sanction.

Q. You said the masses would not understand such a law.

A. The masses feel that it is going against their religion.

Q. You gave some examples where exemption should be granted. Were those exemptions meant for the marriage law and not the law of consummation?

A. Yes.

Q. Foreign travel is one. Will you suggest any other cases?

A. The other case is the one where the father is very old and wants to see the girl settled in his life time.

Q. You will not allow any conscientious religious objection to be the basis of exemption?

A. I don't think there can be any objection on religious grounds.

Mrs. Nehru: Am I right in saying that acquisition of knowledge is obligatory on Mohammedans?

A. Yes. "Fariza", means obligatory. It is essential that both boys and girls should have knowledge of their religion.

Q. Would not early marriage interfere with the acquisition of knowledge?

A. Yes.

Q. Then will you not drop that and allow the girl to acquire knowledge.

A. But it is not necessary for her to acquire all sorts of knowledge. Religious knowledge is enough for her.

Q. Even to acquire knowledge about religion, would it not be necessary to learn Arabic?

A. It can be taught in her own vernacular.

Q. Do you think besides her own vernacular and her knowledge of religious books, it is essential to learn anything else?

A. It is much better. It is not obligatory. Reading, writing and arithmetic are essential. These three R's are essential.

Q. Do you think that it is desirable that a girl should have as much knowledge as possible?

A. Yes.

Q. For this reason would you also suggest an advance in the age of marriage and consummation of marriage?

A. Personally I am in favour of it.

Mr. Kadri: What was the age of Bibi Iasha when she was married to the Prophet?

A. Some say it was 11, some say it was 17.

Q. What is the most accepted opinion?

A. 11.

Q. There is a suggestion that it was 6.

A. There is a difference of opinion.

Q. How can there be a difference of opinion as to a matter of fact?

A. It is now 1300 or 1400 years back that somebody must have written the age. There can be a difference of opinion.

Written Statement, dated the 11th August 1928, of Rao Saheb Dr. SHANKARLAL K. VYAS, Retired Senior Grade, F.C.S.A.S., Ahmedabad.

1. Yes. The age limit is too little.

2. (1) The present Age of Consent should not be retained.

(2) It is very necessary to make an advance on the present law.

(A) Because the development is mostly imperfect due to poverty of the country.

(B) Early child bearing.

(C) Higher death rate, both of mothers and infants.

3. Cases of seduction or rape are not frequent but occasional. The legal increase in the age has succeeded in reducing and has to some extent prevented the cases of rape both in the marital state and also in the improper seduction of girls for immoral purposes.

4. Yes, the marriages are generally delayed and there is a general tendency to increase the limit to 16 years.

5. The girls attain puberty according to their health; generally between the ages of 13 to 15, more or less variable in different castes and communities.

6. (1) No.

(2) Often after puberty, but not soon after.

(3) Rarely. But no such cases come to the court.

7. No. But wherever exists it is due to orthodox ideas.

8. No.

9. No. At least the age of the girl should be 16 years with good health.

10. After 18, but even at this age a girl may not be competent to have an intelligent realization of consequences. This would vary in different castes according to the diffusion of education.

11. No special records are kept, but it is my very long experience that early marriages have resulted into the development of tuberculosis and many young girls die every year by early conception resulting into tuberculosis and the progeny of early conceptions either succumb during childhood even though well attended to, and many of these who happen to live longer pass an unhealthy and therefore miserable life. The economic loss to the country resulting from early conception and its consequences is incalculable.

12. Yes.

13. Yes. Among educated classes who are also in a position to wield a large influence over their surroundings.

14. No, not as a rule.

15. The difference in the marital and seduction age is nominal. The difference should be greater to find out the true age for evidence.

16. Yes.

17. The husband be punished leniently than the stranger who should be punished with double punishment than the husband, according to the merit of the different cases.

18—19. No.

20. I would prefer penal legislation fixing a higher Age of Consent for marital cases, which would be more effective.

21. The object in view will be better secured by penal law than to depend upon the progress of social reform by means of education and social propaganda against orthodox views.

Oral Evidence of Rao Sahib D. SHANKARLAL K. VYAS, Retired Senior Grade, F.C.S.A.S., Ahmedabad.

(Ahmedabad, 16th October, 1928.)

Chairman: In what part of the country did you serve?

A. Mostly in Ahmedabad and Gujrat. I was also at Surat and Broach.

Q. I expect you are a Brahmin.

A. I am a Nagar Brahmin.

Q. Do you know the conditions about marriages in all castes.

A. I don't know about Mohammadans. I know about Hindus and my own community.

Q. May I know what is the marriageable age of girls amongst Nagars?

A. We generally marry at high ages. It varies from 13 to 18.

Q. But are more girls married at the earlier age or the later age?

A. It all depends upon circumstances. When we get good husbands we perform the marriage.

Q. Are there any marriages before puberty?

A. Very rarely.

Q. Have you reason to believe that there is consummation of marriage below 13?

A. I don't think so. For the last 15 years I see that the age is increasing.

Q. What is the marriageable age amongst Brahmo Kyshatrayas here?

A. Between 18 and 25 they perform the marriage.

Q. What is the marriageable age amongst the Jains?

A. Generally it is above 16.

Q. Are there any castes which marry at a low age?

A. The lower castes, those who are not much educated marry at a very early age.

Q. Which are those lower castes?

A. Among the Banias they marry at an early age.

Q. Are there any other castes also?

A. Khanchies and Pattadars also marry at an early age. Khanchies generally marry after 13.

Q. Do you know of any other castes that marry at an early age?

A. No, I don't know.

Q. What, do you think, is the proportion at Ahmedabad, of those who marry late and those who marry early, above 15 and below 15.

A. 25 per cent. would be marrying late and 75 per cent. marry at smaller ages.

Q. You have been a doctor and you must have come across all sorts of patients.

A. Yes.

Q. What is the condition of mothers who were married after 15 and 16? What is the infant mortality and the mothers' mortality among those classes, in which marriage age is higher?

A. Among the first pregnancies we see that the girls are weakened even at the age of 16. When they conceive, they suffer from tuberculosis even at the age of 10. The girls suffer, the children suffer and the mothers get depleted and suffer from tuberculosis.

Q. What is your experience with regard to the Brahmo Kyshatrayas among whom marriages take place at the age of 18. What is the condition among them?

A. Not so bad. But there are cases. They may be due to dust and other things.

Q. Up to what age is there danger to the health of the girl?

A. A girl should conceive after the age of 20.

Q. What about the girls of the Brahmo Kyshatrayas? Are they better off than the girls who are married at 13 or 14?

A. They are better off.

Q. In what way?

A. They suffer less than the other classes.

Q. Which of the two remedies would you like the Age of Consent law or the law fixing the minimum age of marriage?

A. Law fixing the minimum age of marriage. There is no harm in penalising early marriages because the girl must be married after 16.

Q. Has the law of the Age of Consent been effective so far?

A. To some extent, not very much.

Q. In what way?

A. The people think of it. They do not consummate marriages below 13.

Q. If we raise the age to 16 do you think it will be effective?

A. I think so. When the law is there the people won't marry before 16.

Q. What age would you fix for extra-marital cases?

A. 20.

Dr. Beadon: How long were you in practice?

A. I retired after 34 years' service. I was in Ahmedabad for about 15 years. I was also at Surat and Broach.

Q. In those 34 years of practice have you noticed that there is any appreciable increase in the age of marriage?

A. Yes. They were married at 6 or 7.

Q. But we are still told that there are marriages at 6 and 7.

A. People are improving. The age is being slowly increased.

Q. What proportion of girls was married at that age?

A. More than half were married but now much less.

Q. Is there any Annu ceremony here?

A. No. Amongst some Baniyas there is this ceremony. It is not a general condition. Among the Brahmins Annu is common. It is generally brought about when both husband and the girl are of a proper age.

Q. Is consummation postponed by means of this Annu system?

A. Among the higher classes I don't see it is so. It is privately arranged by the ladies of the house.

Q. Do you work among men and women both?

A. Yes.

Q. Have you noticed a great increase in tuberculosis?

A. Tuberculosis has been increasing. Early marriage is a potent reason for tuberculosis. I believe it is nearly double of what it was 15 years ago.

Q. It is more common among women than men?

A. Yes.

Q. Why is that?

A. Repeated pregnancies and rapid intercourse is one of the causes. They do not get proper treatment. There are other causes also. Poverty is one of the chief causes.

Q. That affects both men and women.

A. Yes. There are cases both among men and women.

Q. In answer to Question No. 11 you say early marriages have resulted into the development of tuberculosis. Have you met any cases of early maternity at 14 or below?

A. There are cases, which I have met, but I have not kept any record.

Q. Can you remember anything about the age or other particulars?

A. I cannot remember any particulars. I know they suffer from tuberculosis.

Q. How long after child birth?

A. During their lactation they get consumption.

Q. At what age?

A. 14 years or so.

Q. Do you think that women who marry early are more likely to succumb to tuberculosis during lactation?

A. Yes. I know of a case of my friend's daughter. She was taken out of the city in a neat and open place and she revived. She could not conceive for two years after that. After the first child she got a liver disease and died.

Q. What was the age of the girl?

A. 16 or 17.

Q. Supposing there are two girls one of 14 and the other of 18. Both are attacked with consumption. Is it your experience that the disease will run the same course or will one of those children suffer more severely than the other? None of them has any child and other conditions are equal.

A. The younger girl will suffer more severely than the elder.

Q. What about the children of these mothers? Are they well-formed and are of normal weight.

A. They often weigh 4 or 5 lbs. They are never of normal weight.

Q. What is the average weight of the child born of an older mother?

A. That depends upon the health of the mother. But the children of young mothers are often underweight.

Q. What about the children of early mothers, do they stand the strain as well as the children of elderly mothers?

A. That usually depends upon the care taken by the parents.

Q. Given good conditions, which do you think would be stronger, a child born when the mother is about 14 or a child born when the mother is about 20?

A. The child of the older mother would be stronger.

Q. Is osteo-malacia common in this part of the country?

A. I have seen very few cases. But rickets amongst children are very common.

Mrs. Brij Lal Nehru: You say that the Annu ceremony is performed in your community. Is it public or private?

A. The male members of the family do not know, but the ladies know it.

Q. If we raise only the Age of Consent, how are cases of infringement of the law to be brought to light? If the Annu ceremony is performed quietly at home and only the ladies know about it, how are such cases to be brought to light?

A. The Government must find out some method.

Q. Can you help us with any suggestions?

A. I cannot suggest any means.

Q. Have you seen cases under this law being brought to court?

A. When I was in charge of a Civil hospital for about 15 years, I used to get about one case of rape in a year. I have not had any cases within the marital rights.

Q. Have you seen such cases taking place in families without coming to court?

A. I have not come across any in my personal experience.

Q. At the same time you think that consummation of marriage does take place before 13?

A. No; it does not take place. But the majority of the people do not know the law. Only some educated people know it.

Q. How do you know that the people do or do not know the law? Have you heard any criticisms or suggestions from the people?

A. Not exactly on this point. But we had general talks amongst friends.

Q. Have you experience of villages also?

A. Not much experience. I was in the villages for about 4 years, but not in one village all the time.

Q. In those villages do marriages take place early?

A. Yes.

Q. What is generally the age of the girl?

A. 10 or 11; but not consummation of marriage.

Q. Had you then any occasion to find out whether the law was known by the people?

A. I was not in the villages when the amendment of 1925 was passed. But whether the original law was known or not, I cannot say.

Q. What is the condition of the education of women in your community?

A. The number of illiterate women is very small. Amongst girls nearly 75 per cent. go to schools.

Q. Do your girls have primary education only or higher education also?

A. The girls cannot afford higher education. They go only to the Anglo-Vernacular schools. When they are grown-up they are stopped from going to school.

Q. What is the cause of their being taken away from the schools?

A. One is the cost of education. The second is the growth of the girl. It is difficult to see that the girls are well kept in the schools. It is also risky.

Q. Will that fear be removed if the Age of Consent in extra-marital relations is raised?

A. I have suggested 20 in extra-marital cases. In cases of seduction it is better to have a protective age.

Q. You say that the law has succeeded in reducing the number of cases in extra-marital relations. What is your ground for saying that? On what do you base your opinion?

A. Since the age has been raised from 13 to 14 these cases have become rare. It is my general impression, and is not based on any statistics.

Q. You say that the difference in the age in marital cases and seduction cases is nominal. For seduction and abduction the age limit is 16 and the Age of Consent in extra-marital cases is 14. Which of the two are you referring to here?

A. In my opinion the age should be 18 or 20 in extra-marital cases.

Q. Would you like the age to be raised both in the case of extra-marital relations and seduction?

A. Yes.

Mr. Bhargava: You say that in villages early marriages are very common. Is that so?

A. I was talking about the conditions 15 years ago.

Q. Are there early marriages in villages at present?

A. I do not know.

Q. You say that educated people know about the law, and yet we find that the number of cases which come to court is very small. Is it because that these cases are of a private nature that it is difficult to check them?

A. I should think the number of cases are less.

Q. Do you think that the marriage legislation will be more effective in checking early marriages?

A. I cannot say that.

Mr. Kadri: In the case of girls of the Brahma Kshatriya caste you said that they are generally healthy and strong. Is it because there is no early marriage amongst them?

A. To some extent, due to late marriages and general civilisation.

Q. Is it very common that the progeny of these mothers are stronger?

A. Naturally so.

Oral Evidence of Dr. M. K. PANDIT, for the Lady-in-charge, V. J. Hospital, Ahmedabad.

(Ahmedabad, 16th October, 1928.)

Chairman: You are in charge of the V. J. Hospital.

A. I am the house surgeon.

Q. How long have you been the house surgeon?

A. 7 years.

Q. I understand you will give us some figures about maternity cases.

A. Yes. (The witness submitted a statement.)

Q. For how many years have you got figures?

A. 3 years.

Q. Can you give us the total number of labour cases admitted?

A. 2,333.

Q. Have you got anything about children?

A. I have got weights in some cases:—

At the age of 14 the children born, weight about 4 to 5 lbs.

Under 16 the children born, weight about 4½ to 5½ lbs.

Between 17 and 19 the children born, weight about $4\frac{1}{2}$ to 6 lbs.
 At 18 the children born, (Hindus and Mohammadans) weight about 6 to $6\frac{1}{2}$ lbs., at the most 7 lbs.

At 18 the children born, (Parsis) weight about 7 lbs.
Dr. Beadon: Do you find that the girls of a young age suffer any special injury at the time of child birth?

A. The perineum is more severely torn in a girl of 14 than in a girl of say 18. If the child is a big one this is always the case.

Q. In all those cases have you any stitching?
 A. There were two cases in which we had to insert stitches.

Q. In the 19th year you have had 31 cases in the 1st para. In how many of those cases you had to apply forceps more often than at 19. In about 50 per cent. cases between the age of 14 and 15 we have to apply forceps while in the case when the age is 19 we have to apply in some 25 per cent. cases.

Q. Do you find that the girls stand the strain of labour fairly well?
 A. The younger ones do not stand so well. They become terrified and we have to soothe them. Sometimes we have to deliver under chloroform.

Q. Have you found that there is any special degree of anæmia apart from severe hæmorrhage?
 A. There is pernicious anæmia in this part mostly. Between the ages of 15 and 25 we get some cases of eclampsia.

Q. Do you get eclampsia more in young girls between 20 and 30?

A. We get more cases between 15 and 20.

Q. How long do you keep these girls?

A. Mostly they go by the 10th or the 11th day.

Q. Do you get these cases from fairly well-off people?
 A. They are mostly middle class people. We get many spoiled cases. They spoil outside and come to the hospital. We get many septic cases.

Q. In the case of tuberculosis do you think it is more due to sepsis or to venereal disease?
 A. I think it is more due to sepsis.

Q. Do you get a good deal of tuberculosis among women?

A. We do not admit so many cases of tuberculosis, but we get some cases.

Q. Do you practise outside the hospital?

A. No.

Q. Have you noticed in these seven years that there is an increase in tuberculosis?
 A. I think so.

Q. Do you think that tuberculosis develops during pregnancy?

A. Yes.

Q. Out of the 8 children under the 10th para. can you give me an idea how many of these children are living?
 A. There are many abortions. Some 4 or 5 might be living.

Q. What about the children? Do you find that a fair number of them are pretty well off? Are they on the whole fairly well nourished?

A. In the case of labouring classes you find that the children are better, because the mothers are hard workers and they are stronger. Higher class mothers are sickly. They are always suffering from anæmia and diarrhœa. The children are very poorly nourished.

Q. Does pernicious anæmia attack the labouring class women more than the higher class women?
 A. The better class women are attacked more, in spite of better food.

Q. In your 7 years work have you not any cases where a girl has been brought on account of injury as a result of early consummation of marriage?

A. Such cases do not come to our hospital, they go to the civil hospital.

Q. Is there a great deal of venereal disease?

A. In the city there is. Mostly we get calyngitis ovaritis. All this is due to rape.

Written Statement, dated the 9th August 1928, of Mr. DOLATRAM U. SHAH, B.A., LL.B., President, Ahmedabad Municipality, Ahmedabad.

1. There is marked dissatisfaction among the educated and advanced classes, with the present state of law as embodied in Sections 375 and 376 of the Indian Penal Code. Under the present law, consent to sexual intercourse with her, by a girl of 14 outside the marital state exonerates the person charged. In my humble opinion, consent given by a girl under 16, ought not to be taken as free consent, as the mental development of girls under 16 in this country is not sufficient to enable them to properly appreciate and correctly gauge the consequences of sexual intercourse, both on their constitution, as on their reputation. They are in my humble opinion, persons of immature understanding and any consent given by a girl under 16 should not be considered as valid. In the expression of opinion I am reflecting the views of the advanced and thoughtful section of the public.

2. There are several circumstances, which justify an advance on the present law. The present law exposes girls about 14 outside the marital state, to dangers, the depth of which they are not in a position to fathom. Within the marital state, the girls above 13, are also exposed to risks which it is inadvisable that they should undergo. Medical opinion is very strongly in favour of an advance on the present law, as it tends to undermine the health of the girls. *Mens Sano, in corpore Sano*. There can be no healthy mind without a healthy body. In the interests of the physical welfare and mental vigour of the females, an advance on the present law is a *Sine qua non*. Sexual intercourse with girls below 16, is fraught with far reaching and disastrous consequences to their body, their mind their outlook on life and diverts them from noble pursuits of Art, Science and Literature. The female constitution in India is usually weak, languish and pale and it is premature cohabitation that is mainly if not solely responsible for the weak health of the males and females in this country. The physical deterioration of the people of this country, is due to the pernicious practice of premature consummation and it is high time that those who are charged with the sacred trust of the welfare of the people, should concert early measures to prevent the progressive decline in the health of the people. Within marital state, an advance is equally desirable, for it is a truism that husbands who are fettered by wives at an early age, feel themselves considerably handicapped in the race for life. If the Age of Consent within the marital state is raised the legislature would be removing one of the greatest stumbling blocks in the progress of the people. If any one wants proof of the absolute necessity of an advance on the present law as to the Age of Consent, I say "Circumspice". The emaciated, frail and pale constitution of the people of this country furnish a monument of the inadequacy of the present law and the desirability of an advance upon it.

3. Offence of rape are very rare in this part of the country. Offences of seduction, though not frequent, are not negligible in number. As the offences of rape are very rare in this part of the country, the effect of the amendment of 1925 raising the Age of Consent to 14 years has not been very appreciable, in preventing or reducing cases of rape outside the marital state, nor has the said amendment produced any perceptible effect in preventing or reducing offences of seduction, because the offences of seduction in this part of the country, are committed generally *vis-à-vis* girls whose

age range between 14 and 25. To render the law effective, the Age of Consent should be raised to 16 without the marital state and 14 within the marital state. I would have suggested a higher limit as to the age but I do not believe in high jumps, in matters of Social Legislation. "Festina lente" "Hasten Slowly" is a maxim that should never be forgotten by legislators in India, who propose to advance social reform by legislation.

4. The amendment of 1925 raising the Age of Consent within the marital state to 13 years, has not created any appreciable effect on consummation of marriage, because usually takes place in this part of the country after the age of 13. It has stimulated public opinion in the direction of protecting girls against premature cohabitation and raised hopes in the minds of the educated section of the community that Government would be prepared to undertake social legislation in the interests of the people. It has not put off marriage beyond 13 years, because marriage does not usually synehronise with consummation, except where the bride is 14 or more. There are very rare cases of cohabitation of a husband with his wife when she is below 13, and to prevent such cases, an occasional case or two in a district, against a husband contravening the law, will be quite enough to wake the people up to the necessity of obeying the law. Leaders of social reform may well be asked to report the occurrences of such cases, to the authorities for investigation and the present law will be quite effective to protect girls against cohabitation below 13 years.

5. Girls attain puberty from between 13 to 14 in this part of the country. So far as I know there is no difference in the age, among different classes, castes or communities of society.

6. Cohabitation is common in this part of the country, after the girl reaches 13 but before she attains puberty some classes are obsessed by the idea that it is a sin on the part of parents to keep their girls in the parental house, until puberty. This idea is wearing off gradually but it cannot be said to be extinct. Cases of cohabitation below 13 do not come to Court.

7. I attribute the practice of early consummation of marriage before puberty, not to religious injunction but to what the people believe to be the religious injunction. I am not learned in Shastras but I am credibly informed that the religious Shastras do not enjoin cohabitation before puberty. I maintain that the time is ripe for disregarding the religious injunction, if any, in view of the present deterioration in the health of the people. "Autre temps, autre mœurs". We must change with the times to no law should be considered to be inelastic and incapable of alteration, however high an authority may be responsible for the same.

8. There is no ceremony called "Gaona or Garbhadan" performed in our part of the country. There is a ceremony called "Ana" when the husband goes to the wife's parents, to fetch the wife some time after the marriage, and the "Ana" ceremony is supposed to give the licence to the husband to cohabit with his wife from the date of the ceremony. This ceremony is performed usually before the date of puberty, in the backward classes but after the date of puberty in the advanced section of the community.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. Climatic conditions in India favour puberty at an early age and in my opinion attainment of puberty does not connote physical maturity or fitness to bear the burden of cohabitation. In my opinion, girls after the age of 16 and generally 2 years after the attainment of puberty should be considered as sufficiently developed to justify consummation, without injury to their health and progeny.

10. In my opinion a girl would be able to give an intelligent consent to cohabitation with a due realisation of consequences after 18.

11. In my experience, I have come across cases where cohabitation before puberty has shattered fine constitutions and cohabitation after puberty but before full physical development has weakened the health of the girl. Cohabitation before full physical development invariably spells injury to mind and body.

12. I consider early consummation and early maternity to be responsible for high maternal and infantile mortality. They retard and hamper the intellectual and physical progress of the people. They convert budding flowers into faded physical wrecks and nothing is so vital a need of the present society, as the prevention of premature consummation and maternity.

13. Since the amendment of 1925, public opinion has developed in favour of an extension of the Age of Consent in marital and extra-marital cases. This development is however confined to the intellectual, educated and advanced classes of society.

14. Women favour early consummation of marriage for their children. The reasons for this attitude are 1. A supposed religious injunction in support of early marriages. 2. Apprehension that the girls may go astray, in the event of the postponement of the consummation. 3. In some cases, a desire to prevent the husband from bestowing the attention upon some other person. Such is not however the attitudes of the women who belong to the educated classes.

15. In view of the maintenance of birth registers in villages and cities of British India, little difficulty is experienced in determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code. In rare cases, where for one reason or another, no entry is made in the birth registers in respect of the birth of a girl, difficulties are experienced but they are solved by the Medical evidence. No special measure is necessary to remove or minimise the difficulty.

16. I do not think that the difficulty or margin of error, if any, in determining the age will be materially reduced by raising the Age of Consent.

17. I would separate extra-marital and marital offences into different offences. In the case of extra-marital offences of rape, the punishment at present prescribed may be maintained. In the case of marital offences, age of rape by husband with his wife under 12 years of age, punishment may extend to ten years but in the case of rape by husband with his wife not under 12 years of age and being under 13 years, the punishment may extend to 2 years.

18. So far as within the marital state offences are concerned, they may be triable by District Magistrate or by the Court of Sessions or the Chief Residency Magistrate or by any Magistrate of the First Class. So far as offences without marital state are concerned, they may be triable by the Court of Sessions. No case is made out for any difference in procedure in the trials of offences within and without marital state.

19. In the case of offences within the marital state, sanction of the Public Prosecutor of the District or in the case of the Presidency towns, of the Government Pleader of the High Court should be made a condition precedent to any prosecution and the investigation into these offences should be done by no officer inferior to a Deputy Superintendent of Police or in the case of presidency towns, a Deputy Commissioner of Police.

20. In my humble opinion, legislation fixing the minimum age of marriage will be more effective than penal legislation fixing a higher Age of Consent. It is very difficult to prove offences within the marital state and legislation raising the Age of Consent within the marital state cannot be so effective as legislature fixing the minimum age of marriage. In my part of the country legislation raising the Age of Consent will be more in consonance with public opinion than legislation fixing the minimum age of marriage but with a view to achieve the objects in view, legislation fixing the minimum age of marriage is eminently desirable and on this ground, Mr. Sarada's Bill deserves public support, as it will cut at the very root of the evil which is eating into the very vitals of the Society and saps its life blood.

21. I would rely on the strengthening of the penal law to secure the object in view, and not on the progress of Social reform by means of objection and Social propaganda. In a country where the mass of people are steeped in ignorance and superstition progress by education and propaganda is painfully slow and to accelerate progress, legislation is urgently called for.

**Oral Evidence of Mr. DOLATRAM U. SHAH, President,
Ahmedabad Municipality.**

(Ahmedabad, 17th October 1928.)

Mr. Kanhaiya Lal: Are you the President of the Ahmedabad Municipality?

A. Yes.

Q. How long have you been President?

A. For the last 6 months. I have been a member of the municipality for the last 12 years.

Q. Have you been connected with any other public movement?

A. No.

Q. What is your caste?

A. Jain, Bania.

Q. Amongst your community is there any periodical conference on social matters?

A. Not regularly.

Q. When was the last conference held?

A. As far as I remember it was held last year in Bombay. I cannot be sure about it because I do not attend these conferences.

Q. Are you in a position to say whether any resolutions were passed about the age of marriage amongst the Jain Community?

A. Sub-castes amongst us have been passing such resolutions.

Q. Have you come across any resolution regarding the age of marriage of girls?

A. No.

Q. What is the usual age of marriage amongst girls in your community?

A. Formerly girls used to get married early. It is progressing now. About 8 years back I married my daughter when she was 22. She was a graduate.

Q. What is the usual age of marriage amongst your community?

A. Usually 15 or 16, always above 14. Sometimes people allow their girls to grow if there is no suitable match.

Q. What is the age of marriage of boys?

A. It may be 15, 16 or 18. It all depends upon convenience.

Q. Has there been any advance in the age of marriage during the last 5 or 10 years?

A. I think there is an advance, but people do not do so because they have been advancing. Times are changing and they allow their girls to grow older, because public opinion is not against it, or is indifferent to it.

Q. May I know whether the Gaona or Annu ceremony is observed amongst your community?

A. No.

Q. Is the girls sent to her husband's house immediately or is she kept in her parents' house for some time?

A. The girls are sent to their husbands' houses immediately after marriage, because mostly the girls are matured by the time they are married.

Q. Can you tell us what is the age of menstruation amongst girls in your community?

A. It is between 13 and 15.

Q. Do you recommend that a particular period should elapse after menstruation and before consummation?

A. That is a question for medical men to answer.

Q. But in your statement you have said that it should be two years.

A. I have said that it should be two years after puberty or 16.

Q. What age would you recommend for the consummation of marriage for girls?

A. I would suggest 18.

Q. Do you think it would be acceptable to the Hindhi community?

A. It would not be acceptable.

Q. May I take it then that you recommend that we might as a first step fix 16?

A. Yes; I fully agree with you there.

Q. The complaint is that the law is not observed and offences go undetected. Can you suggest any measures for making the law more effective in bringing the cases to light?

A. In my opinion education is the only method.

Q. Do you think panchayats will help in this matter?

A. I have very great misgivings about them.

Q. We have been told that if panchayats are empowered to look after these cases, they will do both educative and preventive work. Do you think so?

A. It may be tried as an experiment, but I have got very great doubts.

Q. Supposing we have these panchayats, would you recommend cosmopolitan panchayats or communal panchayats?

A. I would recommend cosmopolitan panchayats, because then only will the people not conspire together.

Q. Do you not think that caste panchayats might do the work of education, prevention and detection amongst their own castes?

A. Yes; they might take it up. Even if they are requested to pass resolutions on the subject they will do it. People are advanced and they are of the view that marriages should not take place earlier than 16.

Q. Would they be prepared to act up to the resolutions?

A. The younger generation will certainly do so.

Q. Do you think that social reform organisations might be entrusted with the work of education, prevention and detection?

A. If they are willing to take the work up, they might be entrusted with it.

Q. Would you make marital offences cognisable or non-cognisable?

A. Non-cognisable and non-compoundable.

Q. Would you give the right of making complaints to the parents of the girl and also the social reform organisations in the country?

A. I would give it to every individual who cares to file a complaint. The investigation into these offences should be made by no officer inferior to a Deputy Superintendent of Police.

Q. Would you allow the case to be compoundable with the sanction of the court?

A. No.

Q. Do you realise that the trial of these cases will result in the suffering to the girl? If the husband comes out from jail, he might not allow her to approach him, and might discard her and take another wife, thereby causing the ruin of the girl for the rest of her life.

A. If you want to carry out certain reforms you have to take risks. It is undesirable that the husband should be sent to jail, but it is more or less a question of public interest. If they have before them the example of one or two cases of sufferings, people will be deterred from committing the offence. And the greater good is more important than the smaller evil.

Q. Another suggestion has been made that the trial of these cases might be entrusted to matrimonial courts instead of the ordinary courts which do their work publicly. The matrimonial courts might consist of a magistrate and two non-officials or entirely of non-officials. Do you approve of it?

A. I would like to have a magistrate and two assessors to help him.

Q. Would you have them sit as judges?

A. Yes; I prefer it.

Q. What is the age of marriage amongst the other communities here?

A. Amongst Padidars there is no fixed principle. They usually celebrate marriage at 12 or 13 years. But some members of the community have increased the age of marriage. The age they are not particular about because they have got widow-marriage. No particular age limit is fixed in any other communities. In some communities they first get their girl married to a ball of flowers, and then when there is a suitable match they marry her to the proper man.

Q. What about the Muhammadans?

A. Muhammadans also get their girls married at any age. They are not particular about the age of girls.

Q. Amongst them when the marriage is early, is the consummation postponed?

A. Amongst them the Nika is performed first, and then when the girl attains puberty, Shadi is performed and the girl is sent to the house of the husband.

Mr. Kanhaiya Lal: You belong to the legal profession and you are also engaged in business.

A. Yes; but at present I do not practise.

Q. For how many years did you practise?

A. About 23 years.

Q. How is the system of registration of births working in your municipality?

A. As soon as child is born information is given to the municipality by the parents and if it is not given, the man is liable to prosecution.

Q. Is the system working efficiently and satisfactorily?

A. As far as I know the system is working satisfactorily; but there may be some omissions because there are some illiterate and labouring people who do not report cases.

Q. Very often question of age arise and there is also dispute about identity. In some municipalities there is a supplementary report giving the name of the child, and in others there is a system of entering the name of the child at the time of vaccination. Have you got any such safeguards here?

A. No.

Q. Would you recommend a supplementary report being taken from the parents after the name of the child is given, and would you fix the period?

A. Yes; it should be reported within three months after the name is given.

Q. Would it be better if, when the child is examined at the time of vaccination, the obligation is laid on the municipal authorities to note the name of the child also in the birth register at the same time?

A. If the child dies within a short period of birth, say, 15 days or a month or two months there will be no vaccination. Names will be given only in the case of those children who are alive.

Q. Have you got a column for the names of the children in the register of births?

A. I think there is. I am not quite sure.

Q. Are you in favour of both marriage law and Age of Consent for consummation?

A. I would like to have both.

Q. What age would you recommend for marriage?

A. 14.

Q. And what age would you recommend for consummation?

A. 16.

Q. And what age would you recommend for extra-marital relations?

A. 18.

Q. Are you in favour of Registration of Marriages?

A. Yes; I am in favour of it.

Q. To whom would you give the authority to maintain this register?

A. Municipal authorities, and district and local boards.

Mr. Kadri: It is said that since the last amendment of the Age of Consent was only so late as 1925 it would be premature to raise the age still further within so short a period. What is your opinion?

A. Considering the present times it is not premature. It ought to have been done much earlier.

Q. Do you think the society is advanced enough?

A. Yes.

Q. Your opinion seems to be that till 16 a girl would not be fit to lead a married life and it would endanger her life. Would you not therefore fix 16 as the age for consummation in marital cases?

A. I fear there may be some resentment among the people.

Q. If we are going to give adequate protection to girls, should we not do so?

A. My individual opinion is 16, but looking to the present condition of the society I think people may resent it.

Q. In para. 11 you say that, you have come across cases where cohabitation before puberty has shattered fine constitutions and cohabitation after puberty but before full physical development has weakened the health of the girl. Can you give us any cases?

A. I know many cases of early deaths of girls who were married at a very early age?

Q. At what age?

A. 12 or 13.

Q. Did they die in child birth?

A. Yes.

Q. Have you seen any cases of insanity or hysteria due to early consummation?

A. Hysteria I have found in many cases but I cannot say it is due to early marriage. Hysteria was so very common sometime back.

Mr. A. Ramaswami Mudaliyar: Is it your proposal that we should as a first step fix 14 as the Age of Consent in marital cases and later on increase it to 15 or 16?

A. Yes; we should go by stages.

Q. As against that do you not think that a frequent revision of the law is deprecated by all lawyers. Should not there be a certain amount of fixity and certainty in these cases?

A. But at present people are not ripe for the change in the penal law.

Q. But are they ripe for the change from 13 to 14?

A. Very few will resent it, and even if there is any resentment the resentment will be groundless. It won't have much weight amongst people.

Q. What is the general age of marriage at present?

A. It is above 14.

Q. In that case your fixing the Age of Consent would not touch the community where the marriageable age is 14 and above? Is that why you recommend it?

A. No. I am only recommending it as the first step.

Q. Therefore it is a redundant legislation.

A. The legislation is only for the purpose of seeing that there are no lapses.

Q. May I draw your attention to your own memorandum where you have pointed out the havoc that is done amongst the early married girls? You say that when we legislate we should have in view the largest good of the population. Would you not therefore go in advance of the existing practice and fix a reasonable age once and for all so that this danger might be removed?

A. My personal view is to go far ahead. But looking to the present state of the society I make that suggestion.

Q. If you are going to fix the Age of Consent at 14, it is practically useless because consummation already takes place at 14?

A. In only some communities it takes place at 14.

Q. In your community it takes place at 14. Therefore fixing the age at 14 does not do good at all. For utilitarian purposes it has really no value. On the other hand, if the age of marriage is fixed at 14 it would really be useful. Would it not?

A. If I had the power to legislate I would certainly have 16 and 18 inside and outside marital cases. But you will have to take into consideration the existing state of the society and legislate accordingly.

Q. In view of the fact that already marriages are taking place at 14 and in view of the general desire to promote public health and therefore to advance the age of consummation further, would you not suggest that whatever may be the resentment amongst certain section of the public, 16 ought to be age which the legislature should fix?

A. If the legislature does not care for the resentment of the public it can do so.

Q. What form do you think this resentment will take?

A. Agitation in the usual way and passing resolutions.

Q. Do you think there will be anything more serious than that?

A. I do not think.

Q. Would you agree with me that after legislation has been passed the agitation will die down and people would reconcile themselves after some time?

A. Yes.

Q. That being so, and the evil being so great, a heroic remedy might be attempted and people might be made to reconcile after the legislation is passed? What do you think?

A. I think it should be done in the interests of the society.

Q. In para. 19 you say that in marital cases there ought to be preliminary sanction before the case is enquired into and you suggest that the authority sanctioning such prosecution should be the Public Prosecutor or the Government Pleader. May I suggest that a practising person like the Public Prosecutor or the Government Pleader is not the proper man who should be given the power of sanction in such cases? He has the inevitable disadvantages of a clientele. Would you not therefore revise that opinion and say that the district magistrate should be the sanctioning authority?

A. I would not give the power to a district magistrate, because he will be only one in a district. I would therefore give the power to any first class magistrate.

Q. You are against compounding in these marital cases. Have you any objection to the case being made compoundable with the sanction of the trying judge? Supposing the age is fixed at 16, and an offence has been committed in breach of the law, but no injury has taken place, would you in such cases leave it to the discretion of the trying judge to allow the compounding of the case?

A. My point is that at the early stage of this legislation it is necessary that we should set an example, and if the case is made compoundable, the purpose of the law would be defeated.

Q. So far as the extra-marital cases are concerned, would you fix the age of majority as the Age of Consent?

A. Yes.

Mr. S. C. Mitra: In para. 7 you say that you attribute the practice of early consummation of marriage before puberty not to religious injunction but to what people believe to be the religious injunction. What is the belief of the people as regards the religious injunction?

A. I am not versed in the Shastras, but as far as I know there is no such injunction that consummation should take place at a particular age. But usually people seem to be of opinion that it is a mandate of the Shastras that consummation should take place before puberty.

Q. What is the average age of puberty amongst girls here?

A. Between 14 and 15.

Q. And do you think that the age of marriage is 14 or above?

A. Yes.

Q. Then it means that if there is a notion that the consummation should take place before puberty it never actually takes place before puberty. So practically this is not observed by the people themselves.

A. No.

Q. In reply to a question as regards registration of marriages you suggested that the registration might be made by municipalities in towns and in the mufassal by the district boards. What arrangements would you suggest in the mofussal where there are no district board offices?

A. There are police patels who can keep these registers.

Q. Are the birth registers kept by these people?

A. I am not quite sure; but police patels or Talatis might be authorised to keep these registers.

Maulvi Muhammad Yakub: Of the two kinds of legislation, would you prefer a raising of the age of consent or fixing the age of marriage?

A. I would have both.

Q. Which of them will serve more to remove the evils relating to early maternity?

A. Fixing the age of marriage.

Mr. Bhargara: You are in favour of matrimonial courts. The Parsis have got such matrimonial courts, and they are presided over by High Court Judges. Would you like that High Court Judges should preside over these courts in the case of Hindus and Muhammadans also?

A. It is not possible. It is possible in the case of Parsis because they are a small community, but in the case of Hindus and Muhammadans it is not possible.

Q. Will not Hindus and Muhammadans resent this because they have not got High Court Judges?

A. The matrimonial courts amongst Parsis serve a different purpose, and in their case there is the dissolution of marriage also. But our courts will have different offences to deal with. It is enough if the matrimonial courts in this case were presided over by a first class magistrate assisted by two non-officials.

Q. Would you like that they should be judges also having equal jurisdiction?

A. Yes.

Q. Would you have them paid or honorary?

A. They can be honorary gentlemen.

Q. What is your opinion about assessors in general in sessions cases?

A. I have not got a high opinion about them.

Q. If the marriage age is raised, the cases that will come to these courts will be very large in number. Do you not therefore think that the cost of having these matrimonial courts will be great?

A. I do not think there will be a large number of cases. In any case I do not think it will be so expensive as to be of any inconvenience to Government.

Q. Do you know of any other form of trial of this nature in which there are more than one judges sitting as an original court?

A. Yes. In Bombay there are first class bench magistrate and three judges sit together.

Q. You said you would give the right to report these cases to everybody including reform association and others. As regards these social reform associations would you give them the right to make complaints also?

A. I think this sort of complaint can be made by anybody.

Q. Do you not think that there will be false cases intended to harass parties?

A. I do not think there will be many.

Q. Why do you provide for preliminary sanction. After all sanction is meant to serve as a check. Do you think that the number of cases will be very large?

A. I want to provide this safeguard to serve as a check against harassment by persons, and there may not be many cases coming forward.

Q. You want the right to report to be given to every body and these reports should go to a central body who should sift the case, sanction prosecutions and initiate the proceedings?

A. Yes.

Q. Do you think that the State should pay for these cases or the individuals themselves? The general practice is that the person who obtains sanction is responsible for the legal expenses?

A. In my opinion the Government should pay the expenses even if the offence is non-cognisable.

Q. In many cases the sanctioning authority will be responsible for the prosecution.

A. The authority that is to give sanction is restricted to giving sanction and nothing else.

Q. At present there are cases like the ones under sections 476 and 124A, Indian Penal Code, which require the sanction of the Government. In such cases the Government meets the expenditure. Do you think that in these cases also it should be so?

A. Yes; that is my view.

Q. You said that there should be registration of marriages. Supposing the registration of births is accurate enough, will you have the register of marriages for finding out the age again?

A. Yes.

Q. Then there will be two registers for finding out the age.

A. That will be necessary.

Q. Will you have any period fixed by which time the report of the marriage should be made to the authority concerned?

A. Yes; it may be three months.

Q. On whom would you place the obligation to report?

A. On the parties themselves.

Q. Do you think that if a person knows that if he gives the right age of the girl he will be punished, he will give the right age at the time of marriage? Do you not think that there will be a general tendency to give a wrong age? The ultimate check in your opinion will be the birth register. May I know what is the use of maintaining a marriage register?

A. People will know that there is a law about the age of marriage.

Q. Then will you have this register for the purpose of popularising the marriageable ages?

A. Yes; besides, there are some people who are backward and who do not get their births registered.

Q. Supposing the birth registers are made more accurate?

A. That supposition is rebuttable.

Q. Is it not all the more so in the case of marriage registers?

A. Yes; but men will think twice before giving a false age at the time of the marriages, because it will be compared with the birth register.

Q. But their neighbours will corroborate them. Do you think that more regard will be paid to the birth registers if a wrong age is given at the time of the marriage? Do you not think that this marriage register will be producing confusion?

A. People will think twice before giving a false age and they will learn the responsibility that will devolve upon them by giving a false age.

Q. There will be a school register, a vaccination register, the horoscope and other registers. Do you still think that there should be a marriage register? The cost of keeping a marriage register will be enormous. Is it then worthwhile to keep these registers?

A. If the birth and vaccination registers are maintained properly, and accurately, there is no need for the marriage register.

Dr. Beadon: You say you have seen cases of injury at 12. Were they amongst Hindus or Muhannadans? Was there much trouble at the time of delivery? Did the children survive?

A. As a result of the child-birth the girls died.

Q. When did the girls deliver?

A. The girls were married at about 12 and delivered at 14 or 15.

Q. How many such cases have you seen?

A. I remember a number of cases.

Q. Was it as a result of the first child-birth, or repeated child-births?

A. In some cases first child-birth, and in some cases repeated child-births.

Q. Was it recently?

A. Continuously during the past 10 or 15 years.

Q. Have you been living for many years in Ahmedabad?

A. Yes.

Q. Is there an increasing amount of consumption in the city?

A. Yes; there is an increasing amount of tuberculosis, and it is mostly due to the after effects of malaria.

Q. Is there a great amount of malaria in the towns?

A. Yes; it is even now raging. It is usually after the monsoon.

Q. Is there widow-re-marriage here?

A. No.

Chairman: Are there any communities here in which the girls' age at the time of marriage is over 18?

A. There is no such general custom. But amongst the Brahma Kshatriya community here marriages and consummation usually take place after 18.

Q. Comparing their girls with the ordinary girls who marry at the age of 15 or 14 do you think there is any difference in their health?

A. There is a good deal of difference. The girls of the Brahma Kshatriya community are decidedly better.

Q. So far as both the mothers and the babies are concerned?

A. Yes; they are decidedly in a better condition. The Brahma Kshatriyas are socially far advanced and they live a much better life.

Q. Are they all well-to-do?

A. No, not all. But they know how to live a healthy life. The whole community is educated. They know about sanitation and health much more than other people.

Q. What about their women? Do they know personal hygiene and the treatment and rearing up of children? Have they got special knowledge on the subject?

A. The whole community is educated. That creates an impression on the uneducated females also, if there be any.

Q. Are Nagars an educated community?

A. Yes, they are. But the Brahma Kshatriyas are more educated.

Q. Would you say that the Brahma Kshatriyas are the best educated community?

A. They are a very small community, but I think they stand at the top.

Q. Are there any communities here whose daughters are married before 15, consummation takes place, and yet no evil consequences have ensued?

A. I know of such community.

Translation of Written Statement of Syed BADI-UD-DIN (commonly known as Syed Ghulam Sah) of Mohalla Daryapur near Papatia Bar, Ahmedabad, Bombay Presidency.

786:—In the name of God, the Merciful, the Generous.

Problem.

What say Ye O learned divines and revered exponents of Islamic law, as to when a girl ceases to be a minor and as to when the age of puberty begins? Explain with convincing proofs and reap the reward therefore.

Answer.—God gives light that reveals the truth and leads to welfare.

A girl attains puberty when she begins to have the monthly courses and herein ages differ with different individuals, owing to racial and climatic conditions.

In order to find out whether a certain girl has attained puberty one should examine the conditions of her body, notice her facial features as Fateh-ul-Qadir (a book on Muslim law) says, "In order to decide when a girl has ceased to be a minor, one should take the lowest estimate of time, i.e., 6 years; but in order to decide when she has attained puberty one should find out if the monthly courses are on."

Now exponents of Islamic law differ as to the age when these courses are on. Some say they are not at 6, some put them at 7, some at 9, and some at 12. They are, however, agreed on 9. (This refers to hot countries like Arabia and the people like the Jews.)

The author of *Sharah Wiqayah* (a text on Islamic law) says:—

Original "Haiz is the blood that the womb of a pubert woman throws out of rejects".

Explanation.—A girl at 9 is pubert (because she throws out blood from the womb).

(A book) Fatwa Alamgiri says "The girl should be treated as a minor so long as she does not have the monthly courses and these depend upon many things: one being time (other things are race, food, climate, social, statns, etc.). They begin at 9 and go up to old age, and this is quite plain.

Written by one who begs forgiveness of God and whose name is Badi-ud-Din commonly known as Syed Ghulam Shah of Mashad, afterwards of Ahmedabad:—

May God forgive him of the day of Judgement. This humble servant of God is of opinion that we should not allow our reason to have any, say, in this matter, and that we should take our stand on what the exponents of Islamic law has decided for us.

Oral Evidence of Saiyad BADI-UD-DIN alias Saiyad GHULAM SHAH.

(Ahmedabad, 17th October 1928.)

Mr. Kanhaiya Lal: What is your profession?

A. I am a maulvi and wazifadar.

Q. What is the age of nikah of girls among the Mohamedans?

A. Among the uneducated classes it is 6, 7 or 8 years and among the educated classes it is 10 or 11 years.

Q. When a girl is fit to become a mother without injury to her health or to that of her progeny?

A. It depends on the physical development. I think between 13 and 15 there will be no injury.

Q. Do you know of any cases of girl mothers who have suffered at 13 or 14?

A. There is no injury at 13 or 14.

Q. In India 20 per cent. of the children die within the first year, is that the case among the Mohamedans?

A. Yes.

Q. If the age of consummation is raised infant mortality will be less?

A. But infant mortality is due to bad food and on account of their getting bad milk. So long as suckling goes on cohabitation should not take place.

Q. Are not children born of girl mothers weaker? Is not that one of the reasons for child mortality?

A. Yes.

Q. Should the age of consummation be raised?

A. According to religion we cannot stop marriage when a girl reaches balugh; she should be married. A girl attains puberty at 9 years and that is the age of balugh.

Q. Will it not be advisable to raise the age of consummation?

A. After puberty sexual desire is created and then there is no harm for sexual intercourse.

Q. We have been told that at the first signs of puberty a girl is not physically developed and ossification is completed at 25. According to medical opinion a girl is not fit to produce children before 18 without injury. Don't you think that the Age of Consent should be raised so that there may be less loss of children?

A. According to Shariat if a girl has sexual intercourse before marriage the parents will be sinners.

Q. The parents should take care of her and give her education?

A. They are poor and cannot do it. There are classes who do not marry before 14 and the proportion of these classes is very small. Poor people cannot protect their girls as the upper class people can do.

Q. In non-marital cases if the age is raised it will protect the girls. Up to what age should they be protected?

A. After balugh if a girl consents there is no harm. They can give intelligent consent at 12, 13 or 14 and can understand the consequences.

Q. Is it in marital cases or non-marital cases?

A. In both.

Q. If we raise the Age of Consent to 18 in the case of non-marital cases would it protect the girls?

A. There will be no protection. We cannot restrain her after puberty.

Q. If a stranger cohabits with a girl of 14 with or without her consent he will be punished. It has been recommended that if the age is raised it will be beneficial.

A. No. The age should not be raised.

Maulvi Mohd. Yakub: According to the present law a girl cannot become a prostitute and if the Age of Consent is raised to 18 there will be no prostitutes up to 18. Girls will be prohibited from entering the profession of a prostitute before 18 and at least there will be less immorality up to 18?

A. There is no harm if the age is raised to 18 in extra-marital cases but for marriage or Age of Consent within marriage should not be raised.

Mr. Kanhaiya Lal: We have been told that the number of deaths of girls between 10 to 15 and 15 to 20 is double the number of deaths of boys. This is due to early consummation and early motherhood. Considering these circumstances and considering the national loss should we not fix an age by which it may be stopped or reduced?

A. That can only be done if you know the diseases from which the girls die. Unless we know that early consummation and maternity are the sole cause of that how can we do it.

Q. Don't you think it will be proper to raise the age so that early consummation should not take place?

A. I think there is no harm at 13 and 14.

Q. Would you like 14?

A. Yes.

Q. We have been told that children who are born of girl mothers are of less weight than those born of mature mothers and the weight of children in India is much less than the weight of children in England. Don't you think that children born of a mother of 16 will be stronger than that born of a mother of 14?

A. That depends upon the physical development of the girl.

Q. If we wish to improve the health of girls should we not raise the age of consummation so that future generation may be stronger?

A. Then stronger girls will also be stopped from marrying.

Q. We want to make all the girls stronger.

A. If that is the main reason then the age may be raised.

Q. According to religion it is said that balugh is reached at 15?

A. That is generally the case but there is difference. If there are witnesses that she is balugh below 15 it will have to be admitted. 15 should not be prescribed as the age of balugh but it should be balugh. It may be 14 or 15. Sometimes girls attain puberty at 9 and in one case a girl got a child in 9 years. I know it from personal knowledge.

Maulvi Mohd. Yakub: Now the progeny of Mohamedans is weaker than it was before?

A. I cannot say; my son is stronger than myself.

Q. Are women weaker than before?

A. Some are and some are not.

Q. What is the age of puberty?

A. I file certain authorities in writing to show when the age of puberty is reached.

Written Statement, dated the 12th August 1928, of Mr. MAGANBHAI CHATURBHAI PATEL, B.A., LL.B., Bar-at-Law, Ahmedabad.

1. In this part of the country there is no dissatisfaction with the state of the law as to the Age of Consent as provided for in the Indian Penal Code. Even the last amendment in the law in 1925 was not demanded by the people. It seems to be there, for the satisfaction of overenthusiasm of some social reformers catching at the legislative powers under a political mandate from the people. Even the first Age of Consent Bill was brought on an isolated instance of Fulwanidasi and the husband's action towards his wife was penalised. The very fact that there is hardly a case reported under that provision thereafter shows that such a grievance is not general amongst the people calling for a drastic penal provision. It is an unnecessary interference by the state into the province of domestic life of the people for it destroys the peace of the Home by creating a source of trouble where the life should entirely be free with the only restraint cast on it by love, mutual good will and intelligent welfare of its members, especially when there was no visible danger to the community at large. It is possible that there may be isolated cases of misfortune here and there, but because of the self-interest of the parties concerned, and the common sense that is guiding the Society that the grievance has never assumed a form worthy of being dealt with by penal legislation.

So far as a stranger's action is concerned everybody is interested in making it most deterrent and hence people are indifferent to the raising of the Age of Consent in their case.

2. As there is no demand from the people of the country for amending the law nor is there any evidence of seriousness of the evil which is sought to be remedied, it seems impolitic to temper with the existing state of the law on a delicate social question. Social legislation should always be undertaken with great caution for it deeply disturbs the sentiments of the people when the state meddles with the sanctity of private life of individuals especially when the question is mixed up with religious beliefs coming down from ages. The question of sex relation is almost always exciting and it is wise to leave it alone to be solved mostly by educating public opinion on the evils of such practices. The great difficulty of even enforcing such a law against the will of the person offending is again a strong reason for the above policy. To empower lower officers of the police and the magistracy with the enforcement of such laws would result in creating indiscriminately cases of exciting terrorism and would widely open the door for satisfying private grudge and corruption of witnesses. To entrust it to higher officers only would reduce the law to a paper legislation. Either way the enactment would not be serviceable and hence I would not like to disturb the existing state of the law.

I am not in favour of making an advancement on the present law as the social conscience of the community has been sufficiently aroused to set the matter right where it is necessary to reform under the present circumstances. What is most necessary to be done in this matter is being gradually adopted by the people of their own accord. To hasten their progress by enactments may possibly create an undesirable reaction inspired by resentment against legislative aggression on the sanctity of family life.

3. In this part of the country the crime of rape is not frequent. Frequency of seduction, when noticeable, is due to paucity of marriageable

girls amongst some of the lower classes of society. I do not consider that the amendment of law in 1925 has any appreciable effect on the crimes of rape or seduction, for besides being quite ignorant of the law, the criminal is hardly capable of making a conscious discrimination for the time being. It hardly enters his brain to dissuade himself from the commission of the crime for the difference in age of a year or so, and it is possible that even honestly he could not rightly judge of the age of the girl.

The only effective remedy in the matter seems to me to be the spread of education and gradually raising the standard of public morals by way of setting best examples to be respectfully followed by the masses.

4. That the sense of responsibility in this matter has arisen in the average husband is a fact, but I do not consider it to be the effect of the amendment of the law in 1925 raising the age of consent; for outside the small circle of lawyers hardly a few persons know anything of the existence of such a law, much less of its latest amendment. I am sure the results achieved in this direction were due to the extension of education and the healthy atmosphere created by public discussions and the definite line of progress now clearly marked out by the wonderful combination of various circumstances which often force on the community a line of right conduct from time to time.

I do not believe that the law on the Age of Consent has over-stimulated public opinion in that direction for as I have stated above most people have no idea that there exists such a law as that. They could not, therefore, be stimulated in abiding by it out of fear of any legal consequences of their action. Neither could they have been tempted to hold to that ideal thinking it to be the standard laid down by the wisdom of legislature for they would hardly concede that all that is laid down in law proceeds from the wisdom of the community.

I know that even when marriages were celebrated at an early age, the consummation of marriage was long postponed, and that healthy custom was followed long before the Age of Consent was first fixed by law. This postponement of consummation became shorter with the gradual rise in the age of marriage; and if the postponement of consummation is now disappearing notwithstanding the enactment of the law on the Age of Consent, it is clearly because the marriageable age has been markedly raised by now. This being the real state of the social reform it will be apparent that the law of the Age of Consent has given no stimulus to the people towards healthy progress of marital reforms. The importance of the said law, in my humble opinion, is too much exaggerated. It is to my mind a paper legislation, and there is no need to add to it making it possibly dangerous to the peace of the otherwise happy family life here.

All the implications involved in this question being thus false, my reply to it is, in the negative.

5. Age of puberty varies from 12 to 15 years in this part of the country. In the cities and towns it is generally lower than in the country, and it also varies at both places according to the healthy atmosphere surrounding the girls and the psychology of the class to which they belong. It, therefore, differs according to the locality, the caste and the class as well as the community.

6. I do not think cohabitation before puberty is common amongst the people. It may be so to an appreciable degree only amongst the most ignorant classes of society where life is rather loose with only a very little appreciation for a higher standard of life. It may also be found amongst other classes but rarely and especially in cases of a man's second marriage with a girl of an age below that of puberty. In a better class of society cohabitation before the age of puberty of a girl is avoided by customary rights which act as a good restraint on the freedom of action of the married couple. Consummation of marriage is not at all common before the girl completes 13 years. If ever such a case happens, it is very rare.

I have no knowledge of such a case coming before court. The record in this behalf is quite blank.

7. No, I do not think that there is anywhere such a religious injunction that there should be early consummation of marriage.

There is a verse in Manusmriti enjoining upon people to get their daughters married at an early age, but that verse imposes no injunction for a consummation of marriage before puberty. The marriage does not mean its consummation too, for there are certain ceremonies to be performed even before the married woman is first sent to her husband's house. There are again very healthy customs established in many castes which put off consummation sufficiently long after marriage not to offend against the rule of puberty. In that verse there is provided a penalty for the parents who remain indifferent to their daughter's marriage after puberty.

This verse is considered by many as a later interpolation to safeguard against the Mahomedan misconduct against unmarried girls in old days.

The only cause of early consummation, wherever it may exist, seems to be the human instinct for propagation of its race and amongst ignorant people the female anxiety to see their children well established in life. Even without consciousness of the existing law on the age of consent both these causes seem slowly to disappear with the advance of education and the cultivation of public opinion which give people the strength of character to restrain their unreasonable instinctive propensities in this direction and give the woman a wider outlook on life.

8. Yes, the ceremony is performed in this part of the country and I believe it prevails both amongst the Hindus and the Mahomedans. It is performed at the time of sending the young wife first to her husband's home and therefore always before consummation. The ceremony is almost always performed after the age of puberty of the married girl. If there be any cases to the contrary they must be very rare in better class of society.

9—10. Yes, puberty is a sign of physical maturity. I think, however, people do not consider it advisable to have an immediate consummation thereafter.

It is most difficult to fix how long after puberty a woman should be considered fit to give an intelligent consent for cohabitation with a full knowledge of its consequences on her own physis and that of her progeny. Indeed it is too much to expect of them to have a full knowledge of its consequences on their own physis or that of their progeny even at a very late age in life. Although 16 years is considered to be the probable age of ripe understanding our experience shows it is only proverbial. Such an age of understanding is hardly reached before they probably live the life out. It is therefore practically useless, to my mind, to search for a period for consummation after puberty in which the woman should have full knowledge of its consequences so as to justify her legal consent. The period of consummation is practically the period of life when the instinct rather than reason for procreation is at its play. When a person is in full possession of reasoned knowledge of the consequences he would hardly go in for a marriage, for then he would rather like to be without it than to fetter himself round in the social responsibilities arising therefrom, and with consequent inconveniences of mistakes committed by human frailty. Marriages at such a late age in life where the couple would be expected to have full knowledge of all the consequences are often barren of the marital results or miserable owing to sharp differences in the view points of life. The age of puberty is, therefore, to be considered the right age when a woman should be considered to be free to accept marriage responsibilities from a practical point of view.

11. I have not come across such a case in my legal practice.

12. High maternal and infantile mortality is due to various causes in which early consummation and maternity, where it exists, is considered by some to be one of them. When, however, we consider the fact that where other causes are absent early marriage has not resulted in maternal and

infantile mortality complained of, and again even with the entire absence of early marriage or consummation, the same maternal and infantile mortality complained of is observable, the evil of early marriage or consummation is undoubtedly exaggerated too much, for I know various communities in which for over a quarter of a century there is hardly a marriage at the age of below 16 of the girl and yet apparently the community is in no way better in their physic or intellect than other communities in which the early marriage would be considered not quite uncommon. To say, therefore, that early marriage and consummation is the cause of present day deterioration in the physical or intellectual power of the people is rather too much beyond the ascertained facts. It is very easy to assert that it obstructs our progress and therefore it should be penalised. It is, however, difficult to make out a sufficiently strong case for the state interference into the private life of the community with a punitive legislation.

13. As I have said above, people hardly know of the existence of the amendment of 1925 or even the existence of the law on the Age of Consent beyond a small circle of lawyers, it is clear that there is no question of an advancement in the public opinion on its extension.

14. Only some ignorant women favour early consummation of their children. Such, however, is not the common sense of the society.

15. It is, as I have said above, a very difficult task to ascertain the right age of girls. Even medical opinion is helpless in that matter. As soon as it would be known amongst the people that on the determination of age depends the proof of guilt or otherwise of a husband or parents, you will be encouraging the vice of increasing falsehood amongst the people. It is hopeless to suggest nice devices of procuring evidence in a country where illiteracy is so extensive.

16. I do not think that the margin of error or difficulty in determination of the right age would appreciably be reduced by raising the Age of Consent.

17. Under the present sections 375 and 376 a person having sexual intercourse with his own wife, the wife being under 13 years of age, would be punishable for rape with a lighter punishment of two years. The suggested amendment with a separate section 376A retaining the section 375 defining rape as before and deleting from section 376, the last part of it giving a separate punishment to the husband has the effect of enhancing the punishment of the husband to the full extent for rape where his wife is below 13 and creating a separate offence under section 376A if the wife were of age between 13 and 14 years, visiting it with the lighter punishment of two years. If my reading of the suggested amendment be right, the existing law is sought to be made most stringent, and a new offence to be created in addition to the existing law. I am of opinion that such an alteration in the law is not called for at all, and it must not be countenanced. The suggestion in 1927 to again amend the law which was last amended in 1925 shows the irresponsibility of the legislator born of his overenthusiasm for making a name of social reform and lightly inviting the legislature to interfere into such delicate social questions, and both on the ground of its being impolitic and unnecessary I should advise the committee to reject it.

18. No, I should like to leave the matter as it is.

19. I have nothing to add to what I have said above while discussing the whole policy of interfering with the family life.

20. No. Fixing the minimum age for marriage is equally useless at present for in vainly attempting at eradicating one evil you will unwittingly create a hoard of others equally or perhaps more detestable. There is no need for touching the question for some time and if education is spreading vast and the public opinion is growing strong the existence of the evil, even where it exists, will soon disappear. It is not a matter of pride to us to put it on statute a penal provision like this simply to satisfy our anxiety to follow other nations of the west. Such, I believe, is the considered opinion of intelligent public.

21. To secure the object in view I should decidedly prefer to rely on the progress of social reform by means of education and social propaganda, and I would try to avoid any interference of the state by a penal legislation in that behalf, for I believe people hold the sanctity of family life dearer than even the personal liberty in politics.

Replying so far so in detail to the question put I would like to say a word with regard to other points of view. Some may say that an advance in the penal legislation on the Age of Consent would not be improper because the conscience of the people is now sufficiently aroused against the evil sought to be remedied. To me it seems that people holding such a view forget the well-recognized distinction between an enabling piece of legislation and a punitive enactment. For an enabling statute you only try to give relief to those who feel it as a grievance. In the punitive enactment you attempt to coerce those, who hold different views, to your ways of thought and action although they do not consider your view point to be right under the circumstances and in which, they think, they have a full right to live. Such a coercion is always impolitic on the part of a state unless their way of life has become such a serious danger to the community as a whole that at any cost it should be dealt with drastically. Again they think that they can effectively remedy such social evils by enacting penal laws. Experience has, however, clearly shown that such penal legislation, even if it be very well-known to the people and therefore it inspires in them the fear of legal consequences, is hardly of desired effect on society especially when it goes against their long followed customs and religious beliefs. If more legislation had a charm in it to transform a society, by this time the Indian Penal Code should have transformed all people into angels. Such hopes are futile. Making such laws and enforcing them against the will of the people create a sort of greed in the legislature to interfere too much into private concerns of the people, and it would be against the well-established principles of a civilized Government which has sufficiently learnt a lesson in politics from the world's history. A restraint on individual liberty would be allowed in such a state only as a last resource and that too when necessary for the safety of the community as a whole.

Some again say that there is so much of social reform done by legislation in some of the Indian states that it might well be copied in British India. To that my reply is that notwithstanding such feverish legislation there for years, the condition of their subjects is in no way better than ours physically and intellectually. And secondly, you will reduce our respect of Laws in British India to the same low level as that of the laws in the Native States. For the people to take pride in respecting the law only in its breach with impunity is surely unbecoming of a foresighted and dignified legislature.

Oral Evidence of Mr. M. C. PATEL, Bar-at-Law, Ahmedabad.

(Ahmedabad, 15th October, 1928.)

Chairman : Have you been practising for a long time at the bar?

A. I joined the bar in 1901. I went to England in 1911 and returned here in 1913. I am practising since 1901.

Q. I understand you belong to the Patadar community?

A. Yes.

Q. Is it true that in your community you have to pay a price for getting girls?

A. On the contrary we are paid for getting girls. Girls' fathers have to pay to husbands to secure a good husband.

Q. Among other communities is there any price paid for girls?

A. Yes, poor people take money for their girls but in the Leva Patadar it is generally not so.

Q. Do you know that in any part of Gujerat there is infanticide?

A. Some 25 or 30 years back there was some such impression created upon the educated people that young girls were put to death because they had to pay high dowry for their marriage. Now I think it is not the case.

Q. As a matter of fact you do not think there is infanticide in any part of Gujerat?

A. Not at present.

Q. I understand that your reasons for not undertaking any legislation are that there is no demand by the people concerned, you would not have social legislation, there will be harassment and fourthly the age is so difficult to prove. These are your four reasons. Any more reasons?

A. I may add that generally at present there is very good atmosphere for reform everywhere and when such social conscience has been aroused there is nothing whatsoever for the Government to enquire.

Q. What percentage of the people have that conscience both in the cities and villages? What percentage of people are influenced either directly or indirectly so as not to have child marriages?

A. I think at present it is about 25 per cent.

Q. What is the general age of puberty?

A. Between 13 and 15.

Q. What proportion would you put in the 25 per cent. of above 16?

A. I think very few. In the other 75 per cent. marriages take place before 13 but this 75 per cent. are every day trying to intimate the 25 per cent.

Chairman: In answer to question No. 10 you say that the period of consummation is practically the period of life when the instinct rather than reason for procreation is at its play. What is your authority for saying that? Is there any medical authority or is it your own impression?

A. I am not a medical man nor have I read any medical books. I know it from personal experience as well as from the experience of friends with whom I have talked and from my observance in society.

Q. Do you think that the period between 13 and 15 is a safe age for motherhood without detriment to the health of the woman or the child?

A. I do not know the meaning you attach to motherhood.

Q. Motherhood means the time when the first child is born.

A. So far as physical capacity is concerned I think puberty is the sign of it.

Q. You think that puberty is coincident with the capacity and power to produce children?

A. I think so.

Q. My question was without detriment to the woman or the child. You may not be able to say because you are not a medical man.

A. We can form some opinion from observation.

Q. Is it your experience that the mothers between 13 and 15 are quite satisfactory?

A. In the society in which I have moved I have seen no mothers at 13.

Q. Have you seen any mothers below 15?

A. I have seen mothers of 16 or above. I have seen no cases when girls of 13 or 14 have become mothers.

Q. Therefore your experience is limited to mothers of 16 or above.

A. My personal experience is limited to that.

Q. In the course of your answer to question No. 10 you have said, when however, we consider the fact that, where other causes are absent early marriage has not resulted in maternal and infantile mortality complained of, and again even with the entire absence of early marriage or consummation, the same maternal and infantile mortality complained of is observable, the evil of early marriage or consummation is undoubtedly exaggerated too much?

I want you to say which is the community in which other causes are absent and early maternity has not resulted in infantile and maternal mortality.

A. Patel community in Kaira District, Kurmi community here in Ahmedabad and also the Kanbis of Gujrat. So far as the Kurmi community is concerned marriages take place very early. They are performed even at the age of 2 and 3, 10 and 12.

Q. When does consummation take place in Kunbis?

A. Before 13 or 14, i.e., about puberty.

Q. Do they become mothers before 15?

A. Generally they do. There are many instances of that type. I have no personal experience of the Kurmi community. I have personal experience of my own caste.

Q. What is your warrant for saying that they become mothers at 15?

A. That is gathered information.

Q. Are the Kunbis better than the Kshatriyas and Nagars in health?

A. They are.

Q. Is that your experience or gathered information?

A. That their health is better is my own experience.

Q. You refer to other causes that are absent. What are those causes?

A. One is poverty and the other is ignorance. In cities there is congestion which is absent there. There is no insanitation in the villages, there is abundance of fresh air and sunlight. There is absence of richness but no definite poverty. I mean they can maintain themselves. There is no congestion, more sanitary surroundings and they have no luxuries of the city, and that is the reason why they are strong. Although early marriage and perhaps early consummation too is there still they keep better health.

Q. Have you any reason to think that infant mortality and maternal mortality among them is less?

A. I cannot say one way or the other. I have got no statistics.

Q. You have also said that in certain communities marriages never take place before 16. Which are those communities?

A. Kshatriya and the Nagar community.

Q. Do they live in villages or cities?

A. Mostly in cities.

Q. Kshatriyas and Nagars suffer the three causes that you have mentioned, congestion, insanity surroundings and poverty and luxurious living.

A. There are other reasons also. Their education, their nice tendencies, their susceptibilities to various influences, all result in making their health worse.

Q. Is their health bad and do they have more infantile mortality and maternal mortality?

A. What I have said is not 'more' but 'not less'.

Q. I am told that the Brahmo Kshatriya community is much stronger community. What is your opinion?

A. I think they are as good or as bad as city people.

Q. In the course of your answer to question No. 1, you have said, the very fact that there is hardly a case reported under that provision thereafter shows that such a grievance is not general amongst the people calling for a drastic penal provision. Is that a correct inference? Cases might be occurring and not brought to light. They may not be brought out for shame, family prestige and such other reasons. Can this also not be true?

A. There is one loophole. The Government might not have been enforcing this law as they are enforcing other laws, but if there had been such a law a number of cases surely the cases would have been brought to light and

In courts. Apart from Government policy or police policy, I am sure that the conclusion that I have drawn is reasonable. Very few cases occur.

Q. Don't you hear distinctly of cases of early consummation?

A. No.

Q. Is there no general talk even in the public? There are very few crimes at 13. In any particular community there may be cases. Amongst the Karwa Pattadars there is a system of mass marriages. After every 10 or 12 years they must marry all children in the community. The result is that children of any age are married. Amongst them consummation must be taking place between 13 and 14, on the presumption that consummation comes immediately after marriage.

A. I can't say.

Q. I am talking of that class of people where infant marriages do take place in spite of contact of other people. Amongst them consummation presumably must be taking place between 13 and 14.

A. You can presume that.

Q. Have you any reason to believe that consummation is put off deliberately till after puberty?

A. My impression is that it is after puberty. I can't say, certainly.

Q. Do you maintain this proposition because few cases are brought to light and there is little or no grievance?

A. Grievance means that society must feel it as a grievance.

Q. Do you mean they do not feel it as a grievance?

A. They do not.

Q. Are you for interdicting coercive social legislation?

A. I am against social legislation except where the social practice is dangerous to the society.

Q. You say that such coercion is always impolitic on the part of the State 'unless their way of life has become such a serious danger to the community as a whole that at any cost it should be dealt with drastically'. Do you think that the practice of 'Sutti' affected the community as a whole? Would you say that that legislation was justifiable?

A. As a Hindu I would say that it was unjustifiable.

Q. What have you to say with regard to infanticide?

A. It must be punished.

Q. Why? It does not affect the whole community. Does it not affect only that community in which it takes place? How do you justify infanticide law?

A. On the ground that if infanticide were not to be punished population would be reduced to a great extent.

Q. But population in one community only. Do you think that even where one community is affected legislation should be resorted to?

A. The question of population relates to the whole.

Q. It relates to the one community only?

A. If it is a very big community.

Q. Would you say that 75 per cent. is a large proportion or 25 per cent. is a large proportion of the whole society?

A. It is obvious.

Q. Supposing the interests of 75 per cent. require a legislation like that, do you think that legislation must be passed?

A. If they demand it.

Q. It is not a question of demanding. If 75 per cent. are affected it is a serious danger to the community.

A. They must feel it.

Q. So is feeling of the grievance the test?

A. People must demand it, otherwise I would not like to have any legislation in social and religious matters. Interference in social life and married life is a matter of serious consideration.

Q. Do you hold that under no circumstances is legislation justifiable in regard to marriage?

A. Unless it becomes a danger.

Q. If in the case of 75 per cent. there is a serious danger would you say that the law is justifiable?

A. Then it would be justifiable.

Q. Are you aware that medical opinion puts the age of safe motherhood at 16?

A. I am not in possession of the knowledge which the committee has.

Q. If I tell you that the consensus of opinion of the medical opinion that we have consulted so far is that 16 and preferably 18 is the age for safe motherhood would you regard it as a serious danger to the community?

A. If there is an opinion like that, which I myself doubt very much, it would be a serious danger to the society, and the remedy would not be legislation but propaganda work. The remedy does not lie in legislation but it lies in social propaganda.

Q. I thought you always said that coercion is impolitic on the part of the State unless their way of life has become such a serious danger to the community.

A. Serious means after all other means have failed, even propaganda and education.

Q. Does it mean that?

A. I have said education and propaganda must be the first remedy and then legislation.

Q. You have said coercive penal legislation is not politic and the State should not undertake such legislation unless there was a serious danger to the whole community. I tried to show you that 75 per cent. of the community was concerned. I also showed you that medical opinion was unanimous that if there is motherhood before 16 there is danger to the health of the girl and her progeny. So the conditions of coercive legislation according to your definition were brought about.

A. No.

Q. Why?

A. Medical opinion is not felt to be true by the people and the grievance is not felt by them so seriously.

Q. Do you mean to say that if medical opinion is not felt to be correct by the people no legislation should take place?

A. I should think so.

Q. Are you in favour of prohibition of drink?

A. But not by law.

Q. All this that you have said refers to the Age of Consent, what about the law fixing the age of marriage?

A. I am against it.

Q. The law which is now being attempted does not make the marriage illegal and void. It only penalises the guardians of the boy and the girl. Their children are not penalised.

A. I am apprehensive of the law being effective. The dignity of the law is highly offended in that way. The law being ineffective it will mean that it is amenable to false evidence. This will hardly remedy the evil. The remedy will be worse than the disease.

Q. This applies to every section of the Indian Penal Code. Is forgery not amenable to false evidence?

A. But this law is highly amenable to false evidence.

Q. In the course of your answer to question No. 20, you say, 'there is no need for touching the question for some time and if education is spreading vast and the public opinion is growing strong the existence of the evil, even where it exists, will soon disappear.' It is not a matter of pride to us to put it on statute a penal provision like this simply to satisfy our anxiety to follow other nations of the West. Such I believe, is the considered opinion of intelligent public. Which intelligent public is this?

A. The society in which I move

Q. 90 per cent. of the evidence shows that it is not intelligent.

A. It depends upon the accurate observation.

Q. Your observation justifies you in saying that this is the view of the intelligent people. I would have understood you if you would have said 'majority of the people' because the majority of the people are not educated.

A. You may be so very accurate in your observation and I am not.

Q. Do you really mean the educated public?

A. Yes. I think so.

Mr. Bhargava: May I know if you have got any experience of the villages?

A. I claim to have some experience. I am a native of the Kaira district which is wholly agricultural.

Q. How long have you lived in the villages?

A. I am still going there off and on. I pass my vacation there to look after my estates.

Q. May I know what part you have taken in the matter of propagauda as regards social reform?

A. So far as is practicable I have done it. In many conferences and in many public meetings I have done it.

Q. Has there ever been a conference of your caste?

A. Yes; for the whole district.

Q. When did that take place?

A. They are being held now and then everywhere.

Q. When was the last caste conference held?

A. It might be three or four years back.

Q. May I take it therefore that at that conference Sarda's Bill and the Age of Consent Bill were not placed?

A. No.

Q. Therefore you had no occasion to find out the sense of the conference.

A. No.

Q. Your caste conference has not passed any resolution fixing any age limit.

A. No. It is only general influence that has raised the age.

Q. Have your caste panchayats fixed any age limit?

A. I remember, one caste conference, that of the Kumbies passed a resolution saying that early marriages should be done away with. I presided over that conference and we passed the resolution.

Q. When you say that the public conscience has been aroused, do you mean that people in general like that the age should be raised?

A. Yes; that is so.

Q. You say that a restraint on individual liberty would be allowed in such a state only as a last resort and that too when necessary for the safety of the community as a whole. So far as the right to marry is concerned, do you realise that it is not inherent in every individual, and the State may interfere; say for instance in the case of lepers. Considered from that point of view, do you agree, that so far as the law is concerned in certain matters social legislation is allowable?

A. The question, after all, is whether the time has arrived for the State to interfere; that is the whole point. The theory is all right.

Q. May I know if you allow this restraint on human liberty when a person is not allowed to commit suicide?

A. In my opinion it is not quite fair. It is a crime only so long as it is in the Penal Code. If the man dies he is beyond the law.

Q. So far as the administration of the law is concerned, you say that if you give certain powers to subordinate police officers, they are likely to abuse it, and if the power is entrusted to higher officers, the law would be reduced to a paper legislation. Do you think that in the case of crimes like murder the same thing is happening?

A. I say that only in regard to the family life where marriage is concerned.

Q. Even under the present law a husband has no right to inflict an injury on his wife. The wife will have recourse to the social legislation, and comes under a chapter in which all injuries are included. The State therefore is perfectly entitled to secure a person from injury whether from a husband or a stranger. Is it not?

A. But I do not think it can interfere so far as marital rights are there.

Q. It is stated that 20 per cent. of the new born babies die within one year of their existence. It may not be due to early cohabitation, but supposing it is due to early cohabitation and early maternity, do you think it is a serious danger to the society?

A. If you want to force my mind as a legislator, I would say I do not consider it a danger. I see you are trying to put me in an awkward position. I have made it very clear that when the condition has arrived, the State has a right to interfere. But I say that the condition has not yet arrived.

Q. I submit that so far as early cohabitation and early maternity are concerned, the condition is very serious. Do you regard it as serious or not?

A. The responsibility will be on the Committee to say yes. I have said no.

Q. You say "The suggestion in 1927, to again amend the law which was last amended in 1925, shows the irresponsibility of the legislator born of his overenthusiasm for making a name in social reform and lightly inviting the Legislature to interfere into such delicate social questions". Do you know the history of this legislation? Do you know that Dr. Gour introduced the bill in 1923-24 and the Legislative Assembly favoured it and the Government opposed it then as it had not ascertained public opinion?

A. I know the result of it only and it is that it has been passed. Only as late as 1925, an amendment was passed and another amendment is proposed in 1925.

Q. May I know at whose instance the amendment was made in 1925?

A. I have no knowledge of the details.

Chairman: But this is a Government enquiry.

A. My point is that the interval between 1925 and now is very short, and that on a matter of this kind some more reflection would be justified.

Mr. Bhargava: Dr. Gour first brought in the Bill and the Legislative Assembly passed it by a majority and the age was accepted at 16. But the Government did not like it and defeated the measure.

A. I think Government were wiser in that respect.

Q. Do you think that this is all the outcome of the brain of some social reformer?

A. It is not a question of social reformer. My remarks are meant to apply to any person who has been responsible for that.

Q. Supposing this law was inevitable, what age would you prefer?

A. If the law is inevitable, 18 to 15. Conditions differ in different societies, and it is not possible to give the exact age.

Q. And for the age of consummation?

A. So far as the age of consummation is concerned, I would have it the same as the age of puberty, that is 13 to 15.

Q. And for extra-marital relations?

A. It is a matter on which people are indifferent. But the limit should not be very far so as to create other difficulties. 18 is generally accepted so far as European countries are concerned, and I would not mind if that is fixed here also.

Q. May I take it you are of opinion that even in young husbands the consciousness has been aroused that they ought not to cohabit at a much earlier age?

A. Yes; it is a fact.

Q. Therefore they want a rise in the age.

A. Yes; but at the same time that does not mean that they want it to be by means of the legislature.

Q. Was there any occasion on which you asked of any person this particular question?

A. I never asked the question.

Q. Is it because the offence is made penal, that you are opposed to legislation?

A. The sense of the people is that it is wrong, but if you carry out this law in full force I am serious about the consequences.

Q. You said that in these cases there is a likelihood of perjury being committed. As soon as there is a marriage, and the report is made to the district magistrate that the marriage has taken place though the girl is below the prescribed age, the district magistrate will, after making the preliminary enquiries, start the prosecution; and the only evidence which will have to be adduced will be about the age of the girl. In all cases the marriage will be admitted. Where is then the chance for perjury?

A. Yes; how will you attest the age?

Q. There are the birth registers, the horoscopes, the vaccination registers and similar registers.

A. So far as the birth and vaccination registers are concerned, they are unreliable. I have come across many cases in which the identity of the girl was in doubt. These registers are made at a time when the names of the children are not given. Supposing there is a family containing 4 or 5 children and one or two children are dead, then the question of identity is difficult. Why then should you take so much risk.

Q. So far as the age is concerned, do you not think that there is the same difficulty in abduction and seduction cases?

A. The question is one of suffering. In abduction and seduction it is a question of the suffering of a stranger who is guilty of the violation of the law of marriage, but in cases of marital relations people will perjure more, and will give false evidence.

Q. You say that the marriage age is rising up automatically amongst the people, and therefore there is no need for legislation. I know of a certain area in India, where 90 per cent. of the people live in the villages and amongst them marriages are very common even below 10 and 11 and the effects are simply deplorable. Do you not think that they are deleterious to the society, and will you not legislate for that part of India?

A. I cannot challenge your opinion there, and I would leave you to act upon your experience.

Q. How long have you got an experience of this social propaganda?

A. Ever since 1901. So far as Gujarat is concerned the propaganda was going on even before 1900.

Q. After about 30 years of propaganda according to your own statement we are having results which are not very satisfactory.

A. Whether it is satisfactory or not is a question of opinion. I think they are satisfactory because the age is slowly rising. There is no need for hurry in a matter like this.

Mr. S. C. Mitra: May I take it that you are not for legislation on these matters, though you personally desire that the age of marriage should be raised?

A. The age is being raised otherwise, and I approve of it.

Q. What do you consider to be ideal age for marriage?

A. Between 13 and 15.

Q. And that is the age at which you think girls attain puberty.

A. Yes; generally.

Q. In paragraph 2 you say that the question is mixed up with religious beliefs coming down from ages; and in paragraph 7 you say that there is nowhere such a religious injunction that there should be early consummation of marriage. I would like to understand what is the nature of the religious belief coming down from the ages, and how do you reconcile the two statements?

A. In the Smritis there is no injunction that the marriage should take place at a particular age. It is the belief coming from custom; for instance they say that Rama was married at the age of 17. There are instances both ways, but people are following some of them.

Q. What is this religious notion amongst the people?

A. During the Muhammadan rule, this religious notion went so far down as to make people marry their girls at 8 and 9.

Q. What is the religious notion at present?

A. There are people who believe that girls should be married before they attain puberty.

Q. Do I understand from your experience that here in this part of the country girls are not married before puberty?

A. No: in 75 per cent. of the case there are child marriages, and 25 per cent. of the people marry their girls after puberty. That is the custom at present.

Q. As regards this higher percentage is it in the villages or in towns?

A. So far as the villages are concerned, you cannot get any percentage. Both the villages and towns are offending against it. It might be that in the villages the proportion is greater. Generally people who are engaged in business marry their girls at a later age.

Q. You are afraid that police officials will harass people if these laws are passed. There are already laws on the statute book but there are not many cases so far as marital cases are concerned. You cannot therefore say that there has been harassment by the police.

A. It is so because the law has not been put into force. Government does not put it into force so strictly. If such is the state of the law, why increase the age. Why not leave it as it is?

Q. What do you mean when you say "it would be against the well established principles of a civilised Government which has sufficiently learnt a lesson in politics from the world's history"?

A. I mean interfering in religious matters.

Q. Will you be surprised if in the civilised world there are laws for marriages and even for consummation. If there are, are you willing to follow the civilised world?

A. But I would point out that at the stage at which we are at present, they did not have those laws. The principle is that if the status of the society is advanced educationally and in every other respect, then you can have legislation and the people will tolerate. But so far as Indian society as it

is at present is concerned it is not advanced enough to have legislation on social matters like these.

Q. You said that after 60 years of social reform we have brought the Age of Consent to 13. How long do you think it will take for you to eradicate the evil if you entirely rely on social reformers?

A. I would like to know what is your ideal age. The ideal age is the age which is fixed by the growth of education. Surely it cannot be so advanced as 21. It is only a question of the age at which girl can be considered to be free from danger due to maternity. Even according to advanced people it is only a question of 3 or 4 years, and this will be reached in the course of some 25 years.

Mr. A. Ramaswami Mudaliar: You said that Government is not anxious to put the existing law into force. Do you mean to suggest that Government is somehow or other discouraging such prosecutions under the existing law?

A. They do not like to interfere lightly in such matters.

A. The law is there penalising the husband when the wife is below 13. Do you suggest that cases do not come to court because Government is against such cases being brought to court?

A. I consider it to be the wisdom of the executive. They wisely refuse to exercise the powers which they have got.

Q. I am not levelling any charge against the Government. I want to know whether you think that as a policy the executive have decided to discourage prosecutions under the Act so far as the husband is concerned?

A. It is not a question of discouraging. It is a question of ignoring it altogether.

Q. You say that Government do not want to have prosecutions, and they have done very wisely in doing so. How is it done?

A. I mean to say that the procedure that has been adopted and followed is wise.

Q. Do you mean to say that this is so even in the case of cognisable offences as when the girl is below 12?

A. Yes; the procedure which has been laid down and the manner in which it has to be carried out have been wisely laid down with special regard to the nature of the offence.

Q. We are asked to inquire about the state of the existing law and the conditions under which it is working. You have made a valuable statement. We would like to know what is the procedure that is adopted, and what are the conditions under which it is working?

A. Under the existing law it is an offence to have connection with a wife under 13, but all the same there must be many cases occurring in which this happens and the law is violated. If you were to see how far these cases are brought to court, you can understand the procedure. You can easily understand that the law is not used so strictly as in the case of other offences like theft.

Chairman: Do you think there are any instructions either express or implied?

A. No; I do not convey any such meaning. Every member of the public is considerate in this respect, and the Government is made up of members of the public. The public realises the difficulties consequent upon the enforcement of the law, and the result is that no cases come to court.

Q. We do not follow what you mean. Do you mean to say that the police are given secret instructions?

A. Firstly complaints are very few. Secondly the people who are willing to give evidence are few. Ultimately there is no sanction behind the law. It is a question of tolerating a law which has not been sanctioned by the public.

Q. Do you mean to say that it is not backed by public opinion?

A. Surely it is not backed by public opinion.

Q. Supposing to-day a legislation is proposed that at 12 years a husband should not have consummation with his wife, would you support it?

A. I do not think, I would change my opinion which I have already given.

Q. That is to say you would not support that legislation.

A. If it is newly made, I would not. I would leave it to social reform.

Q. Would you go further and advocate the repeal the existing law so far as husbands are concerned?

A. No; because it does not affect much.

Q. Supposing offences do not take place under the existing law and there are no prosecutions, what is the logical extent to which you are prepared to go?

A. I would not have any legal interference in such matters. I do not want you to normalise it. As it is leave it. Wait for 25 years and see. If you can improve it is all right.

Q. Do you characterise it as an offence at all, or only call it a normal thing allowed by Hindu law and customs?

A. I would say it is not a sin. If the husband were to rise higher in the scale of morals, it would be better for society.

Q. From your point of view, there is no turpitude involved?

A. There are so many terms, but I can only say that I would not call it a sin. I would like the age to be raised by civilisation or culture or education or whatever you may call it.

Q. Do you consider that it is not a crime against society?

A. I am not quite clear as to the meaning you assign to the word. In my opinion it is undesirable, but not a crime which should be punished in the eyes of society.

Q. Is it not just as possible that social reformers might be wrong in advocating the raising of the age as were the members of the legislative assembly?

A. I do not claim to be a social reformer.

Q. Do you not think it is possible that social reformers may be doing an injury if they advocate a raising of the age?

A. Whether men are right or wrong, cannot be ascertained, because I am not prepared to reply one way or the other.

Q. Have you been elected member of any body?

A. No.

Q. Did you ever stand as a candidate for the Legislative Council?

A. Yes; but I was not successful. That was in the days of non-co-operation.

Written Statement, dated the 12th August 1928, of Lady VIDYA-GAYRI RAMANBAI NILKANTH, Ahmedabad.

I have great pleasure in sending you herein enclosed my answers to the Questionnaire of your Committee.

I take leave to mention that in the beginning of 1927, a joint meeting of several associations of ladies was arranged and they had broadcasted hundreds of handbills explaining the meaning and advantages of the raising of Age of Consent. Also a huge band of lady volunteers came forward to go house to house in this city and get signatures from ladies and gentlemen to a form containing approval to the new Bill which Sir Harising Gour was bringing in the Legislative Assembly. In this way they had been able to get nearly 10,000 signatures within two months or so. The associations which worked together were the Gujarat Ladies' Club, Gujarat Social Reform Association, the Women's Council, Ahmedabad Branch, the Gujarat Kelarni

Stri Mandal, and the Muhila Mandal. The volunteers during their work with people who signed (mostly ladies) found that all without a single exception were in favour of raising the extra-marital Age of Consent to 18 or even 21. A large number favoured marital Age of Consent to be at 16.

The members of the several associations themselves are of opinion that the Age of Consent in marital cases should at least be 18.

In my own opinion the Age of Consent in marital cases is an anomaly which has to come into existence only in our country where so many child marriages take place. Otherwise, marriage and consent are never set apart where grown-up people enter matrimony with the fullest knowledge of the consequences of that like. The Age of Consent is only a measure to fill up the gap between the existing age of marriage and the proper age for its consummation. All our efforts should therefore be directed towards getting a minimum age of marriage fixed by law to 16 years at least, and making it penal to break that law. Till this bane of child marriage is removed from the country, measures like raising the Age of Consent would of very little avail in the progress of our people.

1. Yes, because the ages are too low. In my opinion the ages should be 16 within marriage and 21 outside marriage.

2. (1) There are no circumstances to justify keeping the Age of Consent Law as it is.

(2) Considerations of humanity and medical Science show the justification of making a very great advance in the present law. Unless the age is advanced for marital consent, physical deterioration and obstruction in intellectual development of mothers and inferior progeny, high infantile and female mortality are bound to prevail. Moreover for the improvement of morality the Age of Consent in extra-marriage cases should be raised to 21 so as to protect girls from seduction and their use for immoral purposes.

3. Yes, but the cases brought to light are very few. The change in the age in the amendment of 1925 is insignificant. To make the law effective the age in marital consent should be raised to 16 and in extra-marital cases to 21. With the registration of the birth of a child the mother's age should also be ascertained and registered.

4. (1) No.

(2) Not to a very great extent.

(3) No.

To make the law more effective the only way is to fix the minimum age of marriage at 16.

5. 12 to 14 years. It does not differ in castes or communities but on account of change in the mode of life it differs in classes of Society.

6. (1) Not very common.

(2) Yes, in most cases.

(3) Yes, in some cases.

Such cases do not come to Court. The guardians are responsible for such cases and so they do not complain.

7 Certainly no. Those who wish to support their usual custom may cite authorities from Shastras, but there is no strict religious injunction for the custom and the practice prevails on the ground of custom and in no communities for following their religion.

8. Not to my knowledge.

9. No. In my opinion 18 to be the proper age at which consummation may not be harmful to the health of the girl and of her progeny. But looking to the present state of Society rise from 13 to 18 would be too abrupt and by way of start the Age of Consent in marriage may be raised to 16.

10. No girl can be competent to give an intelligent consent with realisation of consequences before she is 18.

11. In my experience I know of several cases where girls have been permanently wrecked in physique, have been turned melancholic, have acquired

incurable diseases on account of consummation of marriage before full physical development. Besides, early pregnancy bring several injuries to the body of the mother, and her progeny is weak in mind and body. High infantile and female mortality are very often due to early pregnancy.

12. Yes, to a very great extent.

13. Yes, there has been considerable development of public opinion in favour of an extension of the age of consent especially in extra-marital cases to the age of 21. This development of opinion is mostly confined to educated classes, because a large majority of uneducated people are not aware of the existence of the law of the Age of Consent. The desired result can therefore be achieved only by fixing by enactment the minimum age of marriage to 16, because the masses make no distinction between the age of marriage and Age of Consent in marital cases.

14. No. Because they have come to realise the grave injurious results. However, the practice of early consummation is due to prevailing custom and notions.

15. Yes. The difficulty would be removed if the age is raised to 16, when the physical development of a girl would be a safer guide to decide the age—all other proofs failing.

16. Does not survive.

17. Yes, the punishment in extra-marital cases should be as it is. In marital cases where the wife is under 13 years of age the punishment should be the same as in extra-marital cases, and in marital cases above 13 and under 16 years of age it should be imprisonment of either description for two years or with fine or both.

18. The procedure may be the same but all such cases must be conducted in camera.

19. The only safeguard is to raise the marriage age to 16.

20. No. The fixing of minimum marriage age to 16 and penalising the cases of non-compliance therewith would be more effective. The thinking public is of opinion that the fixing of minimum age for marriage would go a great way to secure the vital progress of the people.

21. Both are essential.

Oral Evidence of Lady VIDYAGAYRI RAMANBHAI NILKANTH, Ahmedabad.

(Ahmedabad, 17th October 1928.)

Chairman: Are you the Secretary of the Gujarat Ladies' Club?

A. Yes.

Q. Are you connected with any other reform association?

A. I am connected with the Gujarat Vernacular Society, the Gujarat Social Reform Association, the Gujarat Kelarni Stri Mandal and the Mahila Mandal.

Q. Do you think that the law of the age of consent is not known amongst the people?

A. Yes; that is my opinion. It is not so widely known amongst the people as it ought to have been.

Q. Do you think if measures are taken to give publicity all round it will be effective?

A. Of course it will be effective. The law as published in our law books people do not generally know. If Government take some measures to make it more public people will come to know it better than they do at present.

Q. Would any of the reform associations with which you are connected be willing to make complaints under this law?

A. I do not think so. I have not consulted them on this point.

Q. Ordinarily the parents of the girls are not interested in bringing these cases to light. Up to now there have been no cases on that account. Would Womens' Associations be able to bring these cases to light?

A. I think that if a special body were to be elected from these several associations we can form an association which would help.

Q. What in your opinion is the reason why these cases have not come up?

A. In case of marital relations, the responsibility is that of the parents of the boy and the girl and they being parties themselves do not go and complain against themselves.

Q. But anybody may complain.

A. People do not want to poke their noses in other people's affairs.

Q. Have you reason to think that there are still a large number of girls who are married before 13 or 14 and that they become mothers before 14 or 15?

A. Not every much, I should think. I know some, but they are very few.

Q. Do you think that amongst some people the age of marriage has been increasing lately?

A. Yes; in cities and educated classes only.

Q. Would you put that as a very small percentage in the population?

A. Yes; very small. It is not even 10 per cent.

Q. Have you been able to notice any material difference between girls of communities where girls become mothers after 18, as for instance the Brahma Kshatriya community, and those girls who become mothers earlier, in the matter of physique or with regard to the babies?

A. I have come across such people and have found out a difference in the bringing up of the children and all that. Young mothers do not know how to bring up children. In some cases I have seen the mother's health having been broken down on account of early motherhood. But as for the other part, whether grown up girls are healthy or not, I have not come across any cases and noted the result. The custom of late marriages has only recently grown in this part of the country.

Q. Has not the custom been for a long time in existence amongst the Brahma Kshatriyas?

A. It could not have been for a long time. It is only during the last 5 or 10 years.

Mrs. O'Brien Beadon: You say that in your experience you have come across girls who have become mothers before 14. Would you mind giving us details of one or two cases? Did the girls go through labour without difficulty?

A. I know of some cases where the mothers died in labour.

Q. How many cases?

A. Cases of death 2 or 3 only.

Q. Was it recently?

A. Yes; within the last 4 or 5 years.

Q. Do you know any cases in which the mother delivered safely?

A. Yes; in three or four cases the mothers delivered safely.

Q. In the cases where the mother delivered safely, were the babies all right?

A. Half the number generally live. In these cases the mothers were seriously ill and some of them suffered and were given up for lost, but they

survived. In two or three cases the mothers died and in 4 or 5 cases they recovered from sickness.

Q. Have you had any occasion to see the babies after birth? Do you think that they are as strong and healthy as the babies of older mothers?

A. Those babies whom I had occasion to see were quite alright. There are so many things which contribute to the health of the child, and out of them this is one vital thing.

Q. You might know that nursing is one of the most important things for bringing up a child. Do you think that the children of young mothers if they are properly nursed are quite as strong and healthy as the children of older mothers?

A. They have a greater chance of being equal to the children of other babies. Of course the bringing up, feeding, the mode of living, all these do account.

Q. In these cases were the girls of poor or well-to-do families?

A. Well-to-do families.

Q. Were they Hindus?

A. Yes; Hindus.

Q. Have you seen much tuberculosis amongst girls here in Hyderabad?

A. Yes; it is common.

Q. Below and up to what age is it common?

A. Below 30.

Q. Do many women die of this disease?

A. I have seen several die of tuberculosis.

Q. Is it more common in women than in men?

A. I cannot say because I do not know about men.

Q. Would you say that it is on the increase? Can you say if it was on the increase during the last 5 years?

A. I cannot say that.

Chairman : About the results of the present system of education, do you think it has an impairing effect on the girls? For instance, if an educated girl becomes a mother at 18, and an uneducated girl becomes a mother at the same age, do you think that the girl who is educated would suffer as regards herself and the child?

A. I do not think so; that has not been my experience.

Mrs. Brij Lal Nehru : If a body is constituted from amongst the members of the several organisations you have mentioned, do you think public opinion is advanced enough to help them in prosecuting and bringing to light such cases? Or will they be looked down upon and harassed?

A. That experiment has to be tried. But I do not think many will come forward to help them.

Q. If people really feel about this, such a thing ought to be popular amongst them. Why is it then that you say that they will not come forward to help the organisations?

A. If we go and speak to the people we have very great support. Two years ago a meeting of the several associations was arranged and we broadcast handbills explaining the meaning and advantages of the raising of the Age of Consent as contained in Sir Hari Sing Gour's Bill. A band of lady volunteers went from house to house getting signatures from ladies and gentlemen to a form containing approval to the new Bill which was then being introduced in the Assembly by Sir Hari Singh Gour. In this way we were able to get about 10,000 signatures. We had a good response that way. But when things come to practicalities, I do not think people will help us in giving information and coming forward to help.

Q. At the time when they signed did the people realise that the law would provide for punishment for infringement?

A. They conceded that it was a thing deserving of punishment. Some people who did not know anything about the law said so.

Q. If so many people are against it, what is it then that makes them perform early marriages?

A. Custom.

Q. If half the number are against this in theory, then custom ought to break down. Should it not?

A. Everyone came forward and said that the present practice is not desirable. But if one of them goes against them, they would say it is an offence against custom and try to ex-communicate him. The hold of custom is very great in spite of individual opinion.

Q. Can you tell me what the difference is between the Kelarni Stri Mandal and the Mahila Mandal?

A. The Kelarni Stri Mandal is a new institution started after the Women's Conferences in Poona and Delhi. The Mahila Mandal is a body of 16 or 17 years' standing.

Q. You suggest 18 and 16 for extra marital and marital relations respectively. Do you think that people are far behind of this in practice?

A. The idea suggested to me in this way. When we went round asking people, they said that the marriage ceremony means religious injunction but as far as consummation is concerned, they said that there was no reason why they should remain behind. In our work, we went round and got signatures for 14 because the law put down 14, but our suggestion was 16, and they were agreeable to it, saying that it was a harmless recommendation because it did not interfere with their religion.

Q. Supposing in spite of this law, consummation takes place, before the prescribed age who will bring cases to light?

A. It is difficult to say.

Q. To avoid that if you take bonds from the parents to keep the girl and the boy separate till the prescribed age do you think it would work?

A. It may work amongst the younger generation.

Q. If people are willing to raise the age to 16, won't they be willing to subscribe to any such law which makes it obligatory on them, and will they not abide by the law?

A. They may like it. I am not sure. Their idea is that any force from outside would be a good thing.

Q. Do you think it would be workable?

A. That will only be a moral binding.

Mrs. Nehru: Supposing in spite of our law consummation takes place, who will bring it to light; who will know that such a thing has happened?

A. That is not possible.

Q. To avoid that if we take bonds from the parents of the girl or boy or if the boy is over 18 from himself to keep the girl and the boy separate until the prescribed age, do you think parents will like it?

A. People generally will like it.

Q. Do you think there will be any other difficulties in the working of it?

A. But that is only a moral binding.

Q. If bonds are taken it will be a legal binding as well.

A. It will be good.

Q. You have suggested 21 for extra marital relations. If the age is raised so high is there any danger of girls who are of 18, 19 or 20 years old taking the initiative in seducing boys who may fall a prey to temptation at the instance of girls?

A. There should be some chance of danger.

Q. Besides those bodies that you suggest who else ought to have the right of complaint?

A. I am not a lawyer so I do not know who has it at present.

Q. Ordinarily a complaint for an offence can be made by any member of the public after 12 but before 12 it is cognisable.

A. I would not like the police to do that.

Q. But after 12 even now the police cannot touch that case but anybody from the public can do so.

A. I do not think there will be any harm if things remain as they are.

Q. Do you know whether goana exist in any community?

A. I do not know.

Q. There is a ceremony in Gujerat which is more or less a consummation ceremony.

A. I have no knowledge whether it is the same as consummation or not.

Q. In the procedure of the case would you like it to be a summary trial?

A. Yes.

Q. You have suggested that it should be held in camera?

A. I think so.

Mr. Bhargava : What is the agency for reporting the birth of children in municipalities?

A. There is a department in the municipality.

Q. Who reports?

A. The midwife.

Q. Your suggestion is that the mother's age should be ascertained and registered?

A. Yes.

Q. In the Punjab for instance it so happens that when a child is born any relation can go and make a report and generally people do not know the exact age of the mother.

A. I do not say that the authorities who register these births must make it compulsory along with the registration of the birth, that is the person who goes should ascertain and report it.

Q. Don't you think it is not necessary and it will be difficult to find out the age of the mother?

A. Yes.

Q. Supposing this age can be determined with reference to the birth register of the mother?

A. Then it would not be necessary.

Q. You say that intelligent consent with due realisation of consequences can be given at 18. At present the age is 14 and you have suggested the age to be 21. Because the jump would be a fairly large one, would you be satisfied if the age is 18?

A. I would not mind it. My suggestion to 21 was that we have got a large number of cases where girls are seduced and taken away and used for any purposes. I think 21 years would be a check.

Q. At present the age for seduction is 16 and for those who procure girls it is 18. So if this age is raised to 18 will you be satisfied?

A. Yes.

Maulvi Mohd. Yakub : You have said in your statement that the desired effect can only be achieved by the age of marriage but at the same time

you have said that mostly people do not like fixing an age for marriage because they think it is against the injunction of religion.

A. I said there are many people who came forward and said that it was a harmless thing and had nothing to do with religion. To my mind it seemed that it will be difficult to get them to agree to 16 years for marriage. My point in writing is that as regards this age there was not a single person who said that he was opposed to it. There may be some people who may oppose the marriage legislation but they will not oppose the age of consent.

Q. Personally you think fixing the age of marriage is more desirable?

A. Yes.

Q. You want to make a difference in cases of marital and extra-marital relations. Why do you want to differentiate these cases as regards punishment?

A. In extra-marital case it is a graver offence and an offence committed within marital relations is of lesser degree.

Q. Why do you want these cases to be tried in camera?

A. My idea is that they would get more cases if the things are not made public. People do not like to be criticised when a case is tried in an open court and it is published in the papers. People abhor this publicity. Even in the case of rape they know an offence has been committed, but in order to shield their daughters they do not come forward.

Q. But don't you think that the mere idea of punishment is publicity and putting the offender to shame and if these cases are tried in camera that factor goes out?

A. That is another view.

Q. People will be encouraged to commit such crimes because they will think nothing will happen.

A. They will be punished all the same if they are found guilty.

Q. But they will not be scandalised.

A. The object of the law is not to scandalise people but to punish them.

Q. Punishment has the effect on that person who is punished but making it public has the effect of making it deterrent for the others.

A. I prefer the view that I have given.

Mr. Mitra : Is it not a fact that if the judgment is published that would serve the purpose of a deterrent effect?

A. Yes it will serve the purpose.

Q. Will you kindly tell us the notion that the ladies here have about the religious injunction? What particularly the notion is—is it about pre-puberty marriage?

A. There is a general notion that marriages should be performed before puberty.

Q. Is it not a fact that now generally these marriages are performed after puberty so that they do not observe the Shastras strictly?

A. Yes.

Q. So if there is marriage legislation there cannot be any serious agitation in the country?

A. No. If once the age of puberty is broken it does not matter whether it is one year or two years.

Mr. Ramaswami Mudaliyar : You say that a large number of associations favour marriage at 18. May I know what associations you are referring to?

A. The same that I have mentioned in the beginning to which I belong.

Q. Are you referring to resolutions passed at these meetings?

A. No.

Q. As regards the age of marriage you say that many of these ladies would prefer the age of consent to the age of marriage?

A. Yes that is our experience. The purpose with which we went was not the age of consent.

Q. But at the same time you put the alternative?

A. No we did not put the alternative. That was the opinion offered to us by these people themselves.

Q. May I suggest it to you that it is possible that they prefer the age of consent because it is a less effective measure?

A. No.

Q. Marriage is a notoriously public thing and the offence against the age of marriage cannot be concealed but consummation is private and it is very difficult to find it out. Is that not the reason for their choice?

A. It was not with the idea of having it.

Q. May I take it that this opinion was expressed by ladies of all classes?

A. Yes.

Q. So that it would be difficult to detect the offence among the labouring classes because among them directly the marriage takes place the girl is sent away to the husband's house. Is that not the custom?

A. I do not think that is the custom. There is a period between marriage and consummation because in their case marriage takes place at 6, 7 or 8.

Q. How many years is the girl kept in her parent's house after marriage?

A. Marriage may take place at any age but after the girl is 13 or 14 she is sent to her husband's house.

Q. Do you not think there will be any difficulty or inconvenience by having the girl in the parent's house 2 years after puberty?

A. There may be some difficulty but this must be faced.

Q. When you suggested the age for extra-marital cases were you thinking not of brothel girls but of protecting a large number of families?

A. Yes.

Q. As regards the brothels you would advocate a separate legislation about the suppression of brothels?

A. Yes.

Q. Therefore we are not fixing by legislation about brothel girls; we should take no notice of it?

A. Yes.

Q. May I put it to you that their question is a very small problem as compared with the extra-marital cases and therefore it is not fair to take the difficulty of brothels into consideration in fixing the age which would be for the good of a larger section of the people?

A. Yes, I agree.

Q. In reply to Q. 13 you have said that there has been considerable development of public opinion in favour of extension of the age of consent especially in extra-marital cases. May I know if this question of extra-marital cases has been discussed by any of the ladies associations?

A. Yes.

Q. You have suggested that till 13 years the punishment may be the same as it is for rape. Do you want to make it more rigorous than the present law?

A. Yes.

Q. Between 13 and 16 you want the punishment to be 2 years. Have you considered that in the case of marital offences the family will be broken up and deterrent punishment will fall on the wife who has already suffered?

A. I know that.

Q. And after the husband is sent to two years imprisonment the chances are that on his return he may not live with his wife because she has been practically responsible for his going to jail for such a period. Is this danger not present there?

A. Why I have put it down is just to deter people from taking such a step.

Q. A view has been put forward that in marital cases especially after 14 the punishment should only be fine so that while it will be an offence and the husband will be punished the whole life will not be unduly sacrificed as it will be if the husband is sent to jail. Do you agree?

A. I consider there should be imprisonment; fine only will not have a deterrent effect.

Q. Supposing imprisonment up to 3 months is prescribed do you think it will be unduly lenient?

A. That depends on the discretion of the judge but imprisonment is necessary.

Q. You have not insisted on the maximum being 2 years?

A. No.

Mr. Kadri : Can you favour us with any suggestions to make the law as to the age of consent more effective than what it has been? We have been told that it has been a dead letter because people are not willing to come forward.

Q. The suggestion is that some agency should be created. I have already said that.

Q. Can you create such an agency in Ahmedabad?

A. Yes.

Q. When births are registered the name of the child is not given at present. It was suggested in Karachi that there will be no difficulty in adding one column and making it obligatory on the parents to report the name of the child within 3 months or 6 months. Do you think there will be any difficulty in this suggestion being adopted?

A. No.

Q. There was a suggestion that there might be registration of marriages. Municipalities for instance may maintain registers for recording marriage and for furnishing evidence as to age. Would you favour that proposal?

A. Yes.

Mr. Kanhaiya Lal : You are in favour of fixing the age of consummation at 16? Do you think that the general public will accept your proposal or welcome it?

A. I think a very large majority of people I have come across seem to welcome it. But about the country at large I have no idea what they would think of it. I think they should.

Q. Will the orthodox classes accept it?

A. Orthodox classes are not against it.

Q. Will the rural classes accept it?

A. I am not in touch with them.

Q. Would you be in favour of constituting panchayats in towns and villages for the purpose of watching and looking after and reporting cases of infringement of the consent law?

A. Yes I think it is practical; I would like to have it.

Q. It has been suggested that for the trial of these marital cases we might have matrimonial courts consisting of a magistrate and two non-officials or non-officials altogether?

A. Yes it will do good to have these special courts.

Q. Would you like to have a mixed court consisting of one magistrate and two non-officials of purely non-official courts?

A. I have not considered that.

Q. You recommend that in marital cases below 13 the punishment should be the same as in extra-marital cases. Suppose an offence has been committed on a girl of 12 by a boy of 16 do you think it would be wise or desirable that the boy should be sentenced to a long term of imprisonment and the girl's prospects should be ruined for ever?

A. In such cases I think the discretion of the judge will go a long way.

Q. Would you make these offences compoundable?

A. No.

Q. The object is to restore good feeling between the husband and the wife lest the husband may get annoyed and may turn her out and take another wife?

A. I do not know if the husband knows that his wife has gone against him he will reconcile by compounding the case. He is free to do what he likes; he can marry a number of wives.

Q. Would you give him an opportunity for penitance?

A. It may happen in some cases.

Q. Would you like him to compound with the sanction of the magistrate?

A. No.

Q. But if the magistrate thinks it is not worth compounding he may not sanction it?

A. It should not be made compoundable.

Written Statement, dated the 13th August 1928, of Miss I. N. BHAGVAT, B.A. (Oxon.), Ahmedabad.

1. Yes, there is much dissatisfaction among the educated classes specially among women. Everyone wishes to raise the ages considerably.

2. Every consideration of humanity, science and decency expects an advance on the present law. Child mothers produce physically and mentally degenerate children. In many cases the mother develops incurable diseases and quite often she becomes unfit to bear more children which practically deprives her of all attention of the rest of the family members. Marriages of girls under 13 years make it impossible to work any educational system to supply the necessary cultured and able wives, mothers and citizens.

3. There are not many such cases brought to the court, but it could be said that only one out of every four are brought to light. The middle classes hide them for the sake of respectability, and the poorer classes bring them to light mostly through spite. For this reason we may not count the cases in the hospitals and courts as the normal condition. It is absurd that a girl be considered major at 14 years of age for giving responsible consent

in the most vital matters of life while for every other purpose she is a minor till 18. In my opinion this age should be raised to 21.

4. (1-3) No.

The age should be raised considerably to 16 years and a minimum age of marriage should be fixed at the same age (16) and it should be made effective by penalising it from the experience of 20 years of the Baroda State, no amount of fine is effective. Imprisonment of at least three months to the guardians of both the parties if the husband be a minor and to the officiating Brahmin. I am particular about the Brahmin because he should have absolutely no excuse of ignorance of the law.

5. It differs not on caste or community, but on the standard of living of the family. A normal girl attains puberty between 11 and 12 in well-fed families and at about 14 in under-fed families.

6. (1) No.

(2) Almost always.

(3) Often.

No, most of these cases do not come to the court.

8. No.

9. No. Physical development of a girl cannot be counted from the attainment of puberty. At the age of 18 years an Indian girl may be considered developed enough for question 9.

10. At the age of 21 if she has undergone a continuous course of education. otherwise she is never fit for intelligent consent, because every effort is made (conscious and unconscious) by her elders and others to make the girl believe that she has to live only for the pleasure of her husband and all painful and unpalatable inflictions from him must be suffered like a stoic in silence.

11. Yes, there are too many cases to give examples in detail.

12. Yes. Besides high rate of mortality it is an obstinacy to education. Married boys whose marriage has been consummated do not put their minds to the studies. This practice of early maternity makes it impossible to draw up a workable system of education as girls stop going to school at about the age of 12.

13. Yes, especially since the last two years mostly due to the indefatigable work of Lady Vidyagomi Ramanbhai Nilkanth and Mrs. Ambalal Sarabhai as instruments of the All-India Women's Conference on Educational Reform. They went from door to door and secured 10,000 signatures from the orthodox middle classes to consent to fixing the ages of marriage of girls to 16 and boys to 21 years. The propaganda is continuing through other methods Professor Kanga of Gujarat College, Ahmedabad has also been working in this line for some months past.

14. No. Mothers do not favour it, but some mothers-in-law do, giving "custom and public opinion" as their excuse.

15. Yes. The age of consent should be raised and fixed at a point when the girl is well developed. That should be 18, but for the time being 16 would be more practical.

16. No.

20. Both. The age of consent should be raised and a minimum age of marriage should also be fixed. Age of consent has no meaning to the uneducated and to a good many of the educated people. There is no general public opinion at all in this part of the country, but the thinking public would favour my proposal.

21. There is no other alternative but to strengthen the penal law. Educational and social propaganda are already progressing.

Oral Evidence of Miss I. N. BHAGYAT, B.A. (Oxon.), Principal,
S. L. V. Mahila Pathshala, Gujarat.

(Ahmedabad, 17th October 1928.)

Chairman: You are Honorary Secretary of the Gujarat Social Reform Association?

A. Yes. I sent two replies one as principal and that is my personal and the other as Secretary. I am the Secretary of the Gujarat Association of All-India Women's Conference.

Q. Is there any difference between the personal view and the views of the conference?

A. Very little.

Q. Would you tell us what is the difference.

A. I think the difference is in age. In the case of extra-marital cases mine was 18 and of the Association 21. There is no difference in the marriageable age.

Q. How long have you been in Ahmedabad?

A. For 15 months. Before that I was at Indore. I was Principal of S. L. U. College which is attached to the Karve University.

Q. Do you find here a large number of people who are widowers of ages of above 30 marrying younger girls of 13 or 14?

A. I have been here for a short time but I think it is quite a good number. I have seen men of between 50 and 60 marrying girls of 13 and 14.

Q. In answer to question 3 you say that few cases are brought to light and in order to make the law of the age of consent effective you think that the age should be raised to 16 in marital cases and 21 outside. Will the mere raising of the age make the law effective?

A. We have suggested that a law fixing the minimum age of marriage would make the law effective. That is most practicable. If we raise the age to 16 it will be easier to discover the age.

Q. Have you had any occasion to talk about this matter with more orthodox ladies who have not had modern education?

A. Yes, I have.

Q. Do you think they understand the problem?

A. No, but they are willing to submit to any force from outside.

Q. Do they feel that this is a grievance?

A. Yes, every woman feels it a grievance. They would rather have a law from outside. It would be easier for them to submit; they want an excuse and an effective shield.

Q. Have you had any occasion to notice any evil effects of early marriages among the educated girls?

A. Educated girls do not marry young.

Q. If an educated girl becomes mother after 18 and an uneducated girl becomes mother after 18, we are told that the educated girl suffers more?

A. No, I do not think so. I think it is the case in England because their physique is tried in the school curriculum.

Q. Do you know any cases of educated girls becoming mothers after 18? Have you watched the babies?

A. Yes.

Mrs. Beadon: You have mentioned in answer to question 11 that there are too many cases to give example. Would you give us one or two case from your personal knowledge of young girls becoming mothers?

A. A girl was pregnant at 13 and the child birth was very very difficult. She survived but was unfit to have any more children. That made the life very miserable because the husband was going to marry another.

Q. How long ago was that?

A. The child was born in 1914 and she never had a second child since. She had very difficult delivery and was suffering for 18 hours. She was an upper class Hindu.

Q. Any more cases within the last 5 years?

A. A girl of 13 years and odd months had an operation because she could not deliver without an operation.

Q. What was the result?

A. The child died and the mother is still an invalid although it is 18 months.

Q. Was she in fairly good health before her marriage?

A. She was not very strong.

Q. Have you met any cases in which a well built girl has become a mother?

A. I have known many. After a girl gave birth to her first child she became weak.

Q. What about these children?

A. I have noticed these children are generally physically and mentally weak.

Mrs. Nehru: What is the reason of such large number of marriages between old men and young girls. Do parents give their daughters to such old men on account of greed for money?

A. No it is a custom that every girl should be married and if you cannot get a suitable boy they will give her to somebody who could protect her.

Q. Is it due to scarcity of boys?

A. No, but it may be due to restriction to caste. They are not very poor and money is not the greatest factor. They have got limited circle for choice.

Q. Has the education of girls made any difference with regard to this?

A. In some cases. I am disappointed because our educated girls are shy and do not try to influence their family by their opinion. They rather submit.

Q. Do they themselves hold strong opinions on this point?

A. I know girls holding strong opinion but they quietly submit.

Q. In paragraph 3 you have said that on account of respectability people do not like to go to courts. Do you mean that they try to avoid scandal attached to the case if it goes to the law court?

A. The law court is a thing to be avoided.

Q. If this thing is looked upon as a heinous crime other people than the relations ought to take such cases to courts. Do they avoid it only because of the fear of law courts or because of the drastic punishment?

A. It is the scandal of publicity.

Q. If the punishment is reduced to fine only then will more cases come to court?

A. No. We have suggested that the minimum age of marriage should be fixed so that there will be no interference in the private family affairs.

Q. Supposing that cannot be done for the present, could you propose any other measure to make this law of consent effective?

A. In the case of breach of marriage law the parents and the Brahmins should be severely punished. For the age of consent I think it is not practicable at all.

Q. Supposing bonds are taken from those people and in case of the breaches of the law they are punished by fine or imprisonment.

A. It will be very difficult to organise such things, who will get all the bonds signed.

Q. In cases which come to court the culprits can be made to give this bond to prevent further breach of the law.

A. I have been here for 15 months and I know of two cases where there has been breach of law and the relatives would not go to court.

Q. How old were the girls in those two cases?

A. One was 12 and the other was 12-13. They belong to upper class. The relatives talked in the enthusiasm of the first few days. They said they would do this and that, they would convert the girl to another religion but they sent the girl again.

Mr. Bhargava : You have said that if there is marriage law then the Brahmins should be punished for the breach. Would you like the Kazis to be punished?

A. I mean the officiating priest.

Q. Generally when girls are married they are in purdah both among the Mohamedans and the Hindus and the Kazi or the priest may have absolutely no personal knowledge about the age of the girl.

A. He may get a written certificate that the girl is of such and such age from the parents or guardians.

Q. So you would place the burden of proof on the priest and the parents. There are four or five priests officiating?

A. But the chief family priest is one, he should be punished.

Q. You were instrumental in securing signatures of about 10,000 persons and those signatures were secured for fixing the age of marriage.

A. I am Secretary of this Mandal since last year, I was told about it. But since we have had resolutions passed by the same body that minimum age of marriage should be fixed.

Q. Was this resolution passed after Sarda's Bill?

A. It was passed at that time and insisted on at the Delhi conference in January.

Maulvi Mohd. Yakub : After the educational conference at Delhi certain members of the Assembly had also had the privilege of receiving a deputation from certain ladies asking them to support the Sarda's Bill. You were one of them?

A. Yes.

Q. You have said that child mothers produce physically and mentally degenerate children but one lady witness at Delhi told us that she had an experience of 17 years and that average weight of children born of mothers of tender years was the same as those of grown-up mothers. Do you subscribe to that view?

A. Not at all. She has been a member of our conference for two years and we were surprised to see that in the papers.

Q. Have you got knowledge of certain instances in which the children produced of mothers of tender age were physically degenerate, not at all intelligent and all that?

A. Yes.

Q. You say there are not many such cases brought to the court, but it could be said that only one out of every four is brought to light. Can you suggest any measures by which such cases could be brought to court?

A. I said there is no other way but fixing the minimum age of marriage.

Q. Are there no other measures to make it practicable?

A. No.

Q. What procedure would you suggest for such cases? Should these cases be cognizable or non-cognizable?

A. I don't know much of law.

Q. Can you say whether they should be bailable or compoundable?

A. I don't know anything about that. I think I will require time to think all these points to say which is useful and practicable. I don't think it is possible to say just now.

Q. You were just talking about punishing the Qazi and the Brahmin. I may tell you that among the Shahias there are two officiating priests equally important. They are like pleaders, one on behalf of the bridegroom and the other on behalf of the bride. They enter into contract on behalf of their clients. Whom would you punish in these cases?

A. Both. They should always make it certain that they are doing the right thing.

Q. Do you think that these Brahmins who officiate are learned people?

A. But they pretend to be learned. At least they claim to be learned.

Q. Would you punish them for pretension?

A. That would improve our society if we gave them some responsibility.

Q. You want to raise the age to 21 in extra-marital cases. But probably you know that according to the majority law the boy and the girl attains the age of majority at 18.

A. Is it not 21?

Q. 21 is for those for whom a certificate of guardianship is taken. Ordinarily 18 is the age of majority.

A. I would have 18 then. I want the ordinary age of majority here also.

Mr. Mitra: May I know the number of students in your institution?

A. At present we have 14.

Q. How many of them are married?

A. None.

Q. What is the age of the eldest girl?

A. The age ranges from 18 to 21.

Q. What class or caste do they come from?

A. Most of them are Nagars or Brahmo Kshatriyas. They are some Jains also. All of them are from high classes and none is from the lower classes.

Q. There is a notion that if a girl is not married below a certain age her health suffers. Do you subscribe to that?

A. Yes.

Q. There is an orthodox view that if girls are not married when they are about 18 their health suffers.

A. The general health of the institution is not inferior to the girls of that age. They belong to the ordinary class. It is like other women.

Q. And certainly the students are moral. Is it not?

A. They are quite moral.

Q. As regards the opinion amongst the village women that a girl must be married at a certain age, is that so much prevalent in this part of the country?

A. I don't know much about the villages.

Q. Among the towns folk is there no such opinion?

A. No.

Q. In fact if a marriage law is enacted fixing the age at 16 you don't think there will be any agitation worth mentioning. Do you?

A. There will be some verbal agitation, and that will have to be fought.

Q. As regards trials you support speedy trials.

A. I have not given any answer to that question.

Q. You are not for confining this punishment merely to fine.

A. That should be left to the lawyers to decide. No amount of fine is effective in Baroda. The fine is merely an additional item of marriage expenditure. They take it more or less quite easily.

Mr. Mudaliyar: You have said that in the case of legislation fixing the minimum age of marriage the priest should be punished particularly. Is it because he is a literate man and if he is punished he will know the law better?

A. Ignorance of law should be no excuse for him. Generally they are more educated than those whose marriage they perform in villages.

Q. It is suggested that there may be some difficulty for the priest in finding out the age of the couple.

A. The priest will have the horoscope to find out the age.

Q. You said that mothers do not favour early consummation but mothers-in-law do: that is to say, so far as their own girls are concerned they want them to escape the consequences.

A. It is not a question of escaping the consequences. They want to please their sons.

Q. As regards the punishment would you make it less drastic?

A. It is not a question how far you are prepared to punish the boy. I don't think the boy should be punished at all.

Q. Upto what age?

A. Until he is a major.

Q. In that case if the boy is below 18 would you punish the parents?

A. If the boy is above 18 he should be punished and if he is below 18 the parents should be punished.

Q. Would you be content with a mere fine for the boy?

A. That will be different with reference to the age of the girl and the severity of the crime.

Q. Would you have graduated punishment or would you leave it to the discretion of the magistrate?

A. I would leave it to the discretion of the magistrate.

Q. You said that the age of marriage should be the same as the age of consent. Would you have the age of consent also even if there is age of marriage legislation?

A. We want to fix the both at the same limit of 16.

Q. As a practical proposition do you think, it will be possible to fix the age of marriage at 16?

A. I think so. I think there would be no objection.

Q. Have you considered that the question of the age of marriage is different from the age of consent question? While the orthodox people may be agreeable to the age of consent being fixed at 16 they may not be equally agreeable to the age of marriage being fixed at 16.

A. There will only be meetings and protests. There won't be any active opposition.

Q. If you fix the minimum age of marriage at 16 we shall have to form new institutions like the poor schools where girls without parents could be sent for education and they could be married when they were fully grown up. There must be something like the Parish schools.

A. Yes.

Q. But they may not be able to meet the expenses.

A. Scholarships may be given.

Q. Supposing a girl is not educated at all, would she begin her education at 14?

A. Yes.

Q. That would be taking the girl away from the family circle.

A. I don't think that will do harm to the girl herself.

Q. But don't you see she will have to lose all natural affection with her relations?

A. But this outraging the affections will not be so bad as the crime of her being married at a very tender age.

Q. Would you have a system of exemptions on very strict lines in case the marriage age is fixed at 16?

A. I don't think. It is practicable in England it should be practicable here also.

Q. In England there is no child-marriage law.

A. Surely you need it.

Q. In England girls do not want any sort of guardianship now-a-days.

A. But they will have to have them upto a certain age.

Mr. Kadri: You have said that the law has not been effective. Very few cases have been brought to court. Can you make any suggestions to make it effective?

A. I made one. I don't think there is any other way.

Q. It is very difficult to go into private homes and bring out cases. If we have women's organizations or social reform organizations or village panchayats doing this work do you think cases will be brought to light?

A. I don't think that will be feasible.

Q. Don't you think its educative value will be great? When the people know that the law exists will that not deter them from breaking it?

A. People do not know the law. Even the educated people don't know the law.

Q. We may take steps to publish the law further through the agency of the village officials and others.

A. I don't know if mere knowledge is enough to prevent the crime. Mere knowledge and the fear of being sent to jail will not be a sufficient deterrent. No one can detect these cases. If a person takes a case to a court he cannot find any evidence. The whole family hides facts. It is only in cases where there has been extreme injury, when the girl is in great plight that cases are reported.

Mr. Kanhaiya Lal: Suppose there is no legislation fixing the age of marriage, legislation becomes impossible for some reason or other, would you then fix the age of consummation at 16?

A. We would have to submit. I don't think it will be practical at all.

Q. Would you like a law fixing the age of consummation in those circumstances?

A. I would not support it in any way. I won't come to a compromise.

Q. Suppose there is marriage legislation fixing the age at 14. Would you, in that case, have a law fixing the age for consummation at 16?

A. I would fix both at 16.

Q. That is not in our hands. Suppose it is not possible to fix the age at 16. Would you have 14 then?

A. Nothing under 16. We are pledged in our Conference.

Q. If there is a law fixing the age at 14 would you fix the age for consummation at 16?

A. You can do whatever you like. We won't consent to it. I have no recommendation to make under 16.

Q. In answer to Question No. 20 you say, age of consent has no meaning to the uneducated and to a good many of the educated people.

A. They do not see the difference at all. There is no reason, they just think that way. You try to explain to them, they don't seem to understand it at all.

Written Statement, dated the 12th August 1928, of Mr. GATULAL G. DHURU, Secretary, The Gujarat Social Reform Association, Ahmedabad.

1. The law as to the Age of Consent as contained in Sections 375 and 376 of the I. P. C. is very unsatisfactory.

2. The law should be changed because--

(1) The present law is found useless in preventing the physical deterioration of girls of tender age which it was mainly intended to do. A girl of 13 or 11, according to medical opinion as well according to common experience not fit to undergo all the physical and other hardships of a married life.

(2) The age of consent at present interferes with the education of girls.

(3) A girl of 13 or 11 is altogether incompetent to understand the consequences of sexual intercourse and could not therefore be judged fit to give her consent to the act especially to one who is not her husband.

(4) The consequences of an early consummation of marriage to children--the progeny--are disastrous, children born of such parents either die in their infancy or live as weaklings.

(5) Each generation of girls is gradually getting weaker and weaker owing to the physical sins of their parents, the effects of which are found to work in geometrical progression. It is therefore more urgent that the age of consent should be raised at present than what it was about twenty-five years ago.

3. Yes. The amendment of the law made in 1925 has failed to reduce cases of rape because the age limit is too low. The law can be effective only if the age of consent is raised to 18 within marital state and 21 outside it.

4. No. Marriages are gradually being postponed beyond the age of 13 in many advanced communities not because of the amendment of 1925 but owing to the spread of education and also to economic causes. The illiterate and backward classes are not aware of the existence of the law. Amongst those classes, though marriages take place very early, consummation of marriages is generally postponed till the girl is 16 or more. That class of people are not therefore affected by the present law. Among the higher classes, when girls are married at the age of 14, the consummation of marriage also take place at the same time. The present tendency among

educated classes is to consummate the marriage as early as possible after the wedding ceremony. It is precisely for such cases that a higher age limit is urgently required. In the absence of any law fixing the minimum age of marriage, the age of consent should be raised to 18, because such a law alone would be able to check early consummation effectively.

(2) Public opinion in such a matter takes a tediously long time to be stimulated and a benevolent government should, in such matters, create public opinion rather than wait till public opinion is ripe for such matters of social amelioration.

(3) The best means would be to enact a law fixing the minimum age of marriage at 16 in the case of girls and 18 in the case of boys.

5. Between 12 and 14. The age differs according to difference in upbringing, physical conditions and mental and moral environments, but not according to castes or communities.

6. (1) No.

(2) Yes.

(3) Yes in some cases.

Such cases do not come to court for the simple reason that Indians, as a class, are averse to making such matters public and Indians being, on the whole, fatalists by nature bear all hardships—physical, social, political—silently.

7. There is no religious injunction, so far as I am aware, for early consummation. The practice of early marriages is prevalent owing to so-called religious injunctions, but nowhere is early consummation prescribed.

8. Very rarely.

9. No. A girl cannot be said to be sufficiently developed physically before she is 18 years old. Consummation of marriage before that age is therefore physically harmful. Attainment of puberty is no criterion of the fitness for entering into married life. Consummation of marriage before the age of 18 brings in its turn physical deterioration both of the girl and her progeny.

10. At the age of 18.

11. I am not a medical man. But as a layman I could cite scores of instances, in my experience in which the constitutions of girls are permanently wrecked and physical deformities, fits, consumption and other ailments result owing to early consummation of marriage. The terrible infant mortality of our country is, to a great extent, due to this practice. Children born of such tender girl-mothers hardly survive and if they live they are merely skeletons.

12. Yes, to a great extent. Early consummation of marriage hinders the physical growth and puts a stop to the education and mental development of the girl. Higher education, even secondary education of girls makes very little progress in our country because of the custom of early consummation of marriage. The custom is also responsible for the want of enterprise, disinclination to undertake hard and responsible work, and for going abroad to earn their livelihood in the case of many a young man.

13. There has been considerable development of public opinion in any part of the country in favour of an extension of the age of consent both in marital and extra-marital cases as is evident from the thousands of signatures obtained from women of all classes and communities to support Dr. Gour's Bill. This change in opinion is found even among illiterate women of all classes.

14. No. Every mother, if her honest opinion is asked for in the matter, would wish the postponement of the consummation of marriage of her daughter. The case however is different when she becomes a mother-in-law. Her view point is different in that case. The mother-in-law wishes that the earlier her daughter-in-law comes to her house the better. This desire is partly due to her wishing to be relieved of her household drudgery, and partly due to the common wish of every Hindu woman to become a

grand-mother. She hardly realise the evil effects of early consummation of marriage both on her son and daughter-in-law. In spite of her dislike of the custom, the Hindu woman sends her girl to her husband at an early age because of her aversion to go against established custom and the fear of the 'censure' of people.

15. Yes. It is difficult to say definitely whether a girl is 13 or 14 years old. The difficulty would be avoided if 16 or 18 is the prescribed limit.

16. No. Even medical men of experience cannot definitely say that a girl is 14 and not 13 years old.

17. Yes. In the cases of extra-marital offences, the punishment at present prescribed is proper. In the case of marital offences fine and imprisonment not exceeding two years should be prescribed. I would suggest that in offences of the latter kind, not only the husband but the parents or guardians of the girl also should be punished.

18. Trials for offences within marital state should be conducted in a sort of matrimonial court specially appointed for trying such cases and not in open courts as constituted at present. Trials for offences without marital state may be conducted in the present courts but not in public especially not in the presence of press reporters who should be informed only of the results of trials and not of the procedure.

20. No. Legislation fixing the minimum age of marriage is the desideratum. In my part of the country, the educated public are prepared to fix the minimum age of marriage to 16. They would rather prefer the fixing of the minimum age of marriage to raising the age of consent.

21. Both are necessary. Each is a necessary method of social reform in different cases. Such social customs as are likely to affect adversely the physical mental and moral growth of the nation should be put a stop to by legislation even if public opinion is against it. Education of public opinion is necessary for properly putting into effect the legislation enacted and eventually to raise public opinion to such a level as to make the legislation a mere dead letter. But till then legislation is urgently necessary especially in a country like India where the vast mass of the people is illiterate. An enlightened government cannot afford to wait till public opinion is educated in favour to put down the practice of Satee, infanticide and I may add early marriage and early consummation—practices which affect the physical, mental and moral well-being of a nation.

Oral Evidence of Mr. Gatulal G. DHRU, Secretary, Gujarat Social Reform Association, Ahmedabad.

(Ahmedabad, 17th October 1928.)

Chairman : You are the secretary of the Gujarat Social Reform Association.

A. Yes.

Q. What is the membership and how long has it been in existence?

A. There are about 100 members. It was founded in 1901.

Q. May I take it that this is the opinion of the Association?

A. No, that is my own.

Q. Did you not put it to the Association?

A. The association did not meet. Some of them sent their answers to me.

Dr. Beadon : In answer to your question No. 11 you say you can cite scores of instances in which the constitution of the girl has been wrecked on account of early consummation. Would you mind giving us some details?

A. I know of scores of instances. I know of a girl who became mother at 14. She belonged to a very rich and educated family. She died in 1924.

Q. How long ago was that?

A. 1½ years back.

Q. She belonged to the Jain community.

A. Yes.

Q. What was the age of the husband?

A. 18.

Q. Was she not well-developed?

A. No. In fact she should not have been a wife at all.

Q. Did the baby die?

A. The baby is living.

Q. Do you know of any other cases?

A. I know of some girls whose constitution has been wrecked.

Q. What is generally the age of the girl?

A. It is always below 14.

Q. Have you seen many cases?

A. I have seen several cases of girls becoming mothers at 14.

Q. How many cases have you seen, say, during the last two years?

A. About half a dozen cases.

Q. Do the girls belong to fairly well-to-do families or they belong to the poor labouring classes?

A. They are girls of middle classes. As a matter of fact this particular evil exists more among the middle-classes than among the backward classes. The girls of the middle classes become mothers earlier than those of the poor classes. In their case the marriage age has been increased in practice from 12 to 14 years.

Q. What is the average age amongst the higher classes?

A. I would put it at 14.

Q. Consummation takes place immediately after that.

A. The average age at which consummation takes place is 15. In more than 60 per cent. cases that is the age.

Q. You gave us a case in which the girl died. May I know of what particular trouble she died?

A. I don't know about the particular physical ailments. I can say physically they were very weak. Besides suffering physically they lose all interest in life. They are being worried always. They have no interest in life.

Q. Supposing a remedy could be found out by which a girl could bear children even at that age without any injury would you then fix the age of marriage at that limit?

A. Even then I would not advocate marriage at that age. Entering into life when she should be a girl produces a bad mental effect on the girl and the child.

Q. Does that affect the progeny too?

A. Yes.

Q. Have you seen any cases in which children have suffered?

A. I have seen in baby weeks children brought up by different people in the city and I found that the children of the young mothers and fathers were positively weaker.

Q. Do you know anything about consumption in cities?

A. It is on the increase. Doctors say that it is the result of early motherhood, but personally I would not put it to this evil.

Q. What would you put it down to?

A. It is due to congestion, smoke and dust in the city. It is due to insanitation chiefly. As a layman, I think that there is of course loss of

vitality in the case of early motherhood which makes the girls susceptible to consumption. It is not actually brought about by early consummation.

Mrs. Nehru: Can you tell us why the middle class people allow consummation of marriage at an earlier age than the lower classes?

A. Our social and family life is defective. At the age of 20 or 21 the boys generally go out for earning their living. They want their wives with them. The age of the wife generally is 13 or 14. He takes her with him and consummation naturally takes place. Besides 14 is looked upon as a good enough age.

Q. To which particular community do these remarks apply.

A. This is common to all except the Brahmo Kyshtrias where within the last five years the age has been raised.

Q. Amongst those communities where consummation takes place earlier than the lower classes, is there any education of girls and is there any desire for their education?

A. There is. There is the Mahilla Pathshalla and the Girls' High School where the girls generally go for education.

Q. You say in the absence of any law fixing the minimum age of marriage, the age of consent should be raised to 18.

A. Personally I think so.

Q. If no age of marriage is fixed marriages may take place at any time. Will it not be very difficult to wait for any long number of years for consummation if once the marriage takes place?

A. I should think that the boys should learn better. That is why the boys insist on the girls going with them when they go out. I don't think it will be difficult for the parents to keep the child for 4 or 5 more years especially when we take into consideration the fact that they can keep a widowed girl for her whole life.

Q. But the longer the period between the marriage and the consummation the greater the eagerness of the boy and the girl to be together.

A. It is the parents' business to see to the interests of the girl. They need not bow down to the wishes of the husband.

Q. In that case do you think that the law of guardianship should be changed and parents should be made the rightful guardians upto a certain age?

A. I would not go to law. I think the good sense of the people would prevail.

Q. But if the husband insists?

A. Yes, he sometimes does.

Q. Would you therefore suggest a change in the law of guardianship?

A. I don't think.

Q. Why?

A. As a matter of fact the husband has the right to insist on conjugal rights.

Q. But would you like that the father be made the guardian in preference to the husband till the girl is say 18?

A. That would bring about wholesome results in this particular affair.

Q. Will this age of 18 be agreeable to the general public?

A. I am sure. But I would not stop to think that. If the measure in itself sounds well I would not think whether it would be agreeable to the public or not. When Government makes laws it does not always stop to see whether it would be acceptable or not. You have got to make it agreeable if it is good. For instance, in the case of laws regarding sanitation, segregation and such other things did the Government consult the people?

Q. But this is more momentous, those laws are easy to enforce.

A. That may be.

Q. You suggested that the parents or guardians of the girl should also be punished. What punishment would you prescribe? Would you make the punishment lighter in the case of husbands than in the case of parents, because it is the parents who send the girl.

A. I am not for sending them to prison. Under 18 the parents should be punished and punishment should be fine only. When the boy is over 18 he should be punished and the punishment should be 6 months and not two years. I would modify my opinion in that respect.

Mr. Bhargava: In the case of breach of marriage laws would you make the parents only punishable and not simply by fine but by imprisonment of one or two months?

A. Yes.

Q. And in the case of breach of consent law you say the parents of the girl only should be punished and that with fine only.

A. Yes.

Q. The present law as regards that is contained in abetment section. I think it is generally accepted that the abettor is punished to the extent of the half of the substantive punishment to which the main offender is liable.

A. I would not go to that extent.

Q. May I know why you are punishing the parents of the girl alone? In a large number of cases the parents of the boy are interested in sending for the girl. Do you realise that after all the parents of the girl would send only if the parents of the boy insist. It is at their house that the whole thing takes place. It is they who are primarily responsible.

A. In that case you can make them also responsible and give them the same punishment.

Q. In so far as the backward classes are concerned, the evil, is more prevalent there than in the case of educated people.

A. My experience has been just the reverse.

Q. What about the rural areas? Have you got rural community Councils in Ahmedabad?

A. No.

Q. Well, so far as backward classes are concerned, do you know that cohabitation amongst them takes place at a very early age?

A. That has not been my experience.

Q. You stated something about the law of guardianship. Supposing a provision is made in the Civil Procedure Code that in the case of restitution of conjugal rights no decree is to be passed if the girl is below 16, would you like a provision of that sort?

A. Yes.

Q. You would personally like the age of consent to be fixed at 18 but for purposes of legislation you would like to fix the age at 16.

A. Yes.

Q. For extra-marital cases what age would you fix?

A. 18, as that is the age of majority.

Mr. Mitra: You say that is your personal opinion. I take it that if the members of the Association were consulted they will be of the same opinion.

A. Yes.

Mr. Kanhanra Lal: Will you kindly tell me whether you are in business or in some service?

A. I am an Inspector of Schools and that takes me to villages also.

Q. You have said that you are in favour of having matrimonial courts for the trial of marital cases. Would you like them to be mixed tribunals, that is to say, a magistrate and two non-officials or purely non-officials?

A. In the case of villages I should like to have the Mamlatdar included in the tribunal and two non-officials.

Q. Would it not be preferable to have one matrimonial court for the whole district because the cases would be few and far between?

A. No. It will be a great trouble to come all the way to the city to these courts.

Q. But they come for criminal cases.

A. It is a great nuisance to come for litigation. These being delicate matters they would not take the trouble of coming over to these courts, even though they come for criminal cases and other purposes.

Q. Would you make the matrimonial court move to the place where the case occurs and hold the enquiry there?

A. Yes.

Q. Can you suggest any method for making the law effective?

A. In cities for the detection of the crime I would recommend a sort of vigilant society.

Q. Should they be of a voluntary character or should they be nominated?

A. They may be elected from the existing bodies. They may be members of the local board. A central vigilance Board should be formed for watching and bringing such cases to light.

Q. It has been suggested that if there is a law fixing the age of marriage and also fixing the age of consent, in order to make these laws operative there should be a system of registration of marriages, that is to say, reports of all marriages should be made to a prescribed authority giving the names and ages of the parties and such other particulars. Would you approve of that?

A. That would be helpful. The organization would be difficult. Marriages will have to be reported and recorded and all this sort of thing will have to be done. But it would be useful in questions regarding age if any such cases crop up.

Q. Who should be the registering authority?

A. The municipality or the Taulaka board. The same staff that maintains the register of births and deaths can do this.

Q. Do you think that the chances of giving the wrong age are so much as to condemn this system?

A. No. When the age is given it should be mentioned whether the year is complete or running. That makes one year's difference.

Q. Are you in favour of a provision being made that if the parents make a false statement they should be liable for punishment? We should require a verification from the guardians or the parents.

A. It would be helpful.

Q. Would you further recommend that in the case of these reports a certificate should be issued by the registering authority giving the particulars that are entered in the register to be preserved by the individual reporting a marriage?

A. That would not be necessary.

Oral Evidence of Dr. A. M. SEERVAI, Health Officer, Ahmedabad Municipality.

(Ahmedabad, 18th October 1928.)

Chairman: How long have you been Health Officer?

A. For the last 4 years; I am here since June 1924.

Q. I asked for returns showing the mortality according to the different age periods amongst the different castes. Have you got them?

A. It will have to be worked up from the old records. It will take some time.

Q. Can that be compiled?

A. Yes. It will take some time.

(The witness here produced two charts which he explained to members.)

Q. Why is mortality heavy in 1926-27?

A. That was an unhealthy year all round; and mortality was heavy everywhere. It was also due to local conditions, namely abnormal heat and abnormal rains.

Q. What is the population of Ahmedabad?

A. According to the census of 1921 it is 270,775. Out of them 153,274 are males and 117,501 are females.

Q. What was the total mortality in 1926-27?

A. 13,339.

Q. What was the number of children who died under one year?

A. 4,654.

Q. Can you tell us how many persons died in that year between the ages of 10-15, 15-20, 20-30 and 30-40?

A. The deaths are 214, 501, 1,081, and 896 respectively. I file a statement of mortality returns which will show the deaths from 1918-19 to 1927-28 of males and females ranging between certain years.

(Witness promised to send a statement showing the mortality rates amongst different communities for the last 10 years.)

(Witness also said he would send a statement showing deaths from child-births according to age periods during the last 10 years.)

Q. In 1927-28 the deaths of males and females between the ages of 1 and 10 are on a par. Between 10-15, 15-20 and 20-30 female deaths are larger. From 30 female deaths are lower. Or between 10 and 30 years female deaths are comparatively more than that of males. Can you give any reason for that?

A. It is the period of child-births amongst females. Amongst Hindus especially the girls are not fully developed to bear the strain of child birth and hence more girls than men die during that period.

Q. Besides maternity, can you give us any other reason why females between 10 and 30 die more than men?

A. No; I cannot.

Mrs. O'Brien Beadon: Do you find anaemia common amongst women under 20?

A. I have not had any occasion to notice such cases.

Q. Has there been an increase in tuberculosis?

A. The mortality from tuberculosis is very great, but there has been no increase.

Q. Is it more common among women than among men?

A. Yes.

Q. How long are your birth and death registers maintained?

A. I do not exactly know. But they are destroyed after a certain period.

Q. In the register of births do they provide a column for the name of the child?

A. There is a column but the name is not usually entered at the time of the registration. Later on when the child is brought up for vaccination, the name of the child is entered in the vaccination register.

Mr. Bhargava: Is there any reference in the birth registration to the effect that the children have been vaccinated?

1. Yes. We do make an entry in the birth register, and we give a certificate to the parents to the effect that the child has been successfully vaccinated.

Q. In the year 1915-16 the infant mortality rate is 18.93 whereas in 1915-16 it is 11.82 that is to say the mortality is 80 per cent. more. What is the reason?

A. I attribute it to more accurate registration of births in the later registers, and to increase in population. Also formerly deaths of children who died within 7 days of birth were not entered in the death registers.

(To a written question from the Chairman asking for the reason why the infant mortality rates in 1916-17 and 1925-26 were widely different, the witness promised to give a written reply. The Witness said he would send a copy of the Census Report of the Ahmedabad Municipality for the year 1926-27-28.)

Written Statement, dated the 16th August 1928, of Mr. ISMAIL I. CHUNDRIGAR, B.A., LL.B., Honorary Secretary, Anjuman-i-Islamia, Ahmedabad.

1. (1) There is among the people influenced by western culture considerable dissatisfaction with the state of the law as to the age of consent as at present embodied in Sections 375-376 of the Indian Penal Code, both within the marital state and outside the marital state. There is no corresponding dissatisfaction among the people with Eastern culture and the uneducated people, with respect to the law relating to the age of consent within the marital state, but there is dissatisfaction even among the latter with the present state of the law as to the age of consent outside the marital state.

(2) In the opinion of those, whose minds are inoculated with Western ideas, thirteen is too low an age of consent within the marital state, because cohabitation within that age leads to deterioration in the health of girls and adversely affects their progeny. People whose minds are saturated by Eastern culture and the uneducated masses, do not countenance the idea of any rise in the age of consent within the marital state, because they believe that the Shastras of the Hindus and the Shar'iat of the Muslim, give a husband an undefensible right to sexual intercourse with his wife, and any limitation of that right is regarded by them as an encroachment upon it.

(3) Outside the marital state 14 is considered too low an age of consent by all classes of people, because a girl at the age of 14, is too immature to understand and appreciate the consequence of cohabitation with a person other than the husband, and is incapable of giving an intelligent consent.

2. I am of opinion that there should be an advance on the present law in the age of consent outside the marital state, and the same should be raised from 14 to 16.

Reasons.

(1) Education among Indian girls, is limited and a large majority of them are illiterate. They are not therefore, in a position to form an intelligent opinion about any vital matter, much less about any matter connected with the sexual science, until they attain the age of 18. Even those who are so well placed in life as to receive some education, are usually kept in the dark in this matter and it is no exaggeration to say that sexual science is a sealed book to them. They are therefore not in a position to appreciate the *pros* and *cons* of cohabitation, until they reach the age of 18.

(2) Freedom of movement and action is usually denied to Indian Girls, and they therefore, do not acquire sufficient courage and grit to resist an outrage upon their modesty. They are easy victims to the blandishments of men, and the age of consent should be raised to protect them against any assault upon their chastity.

(3) Cohabitation with a person other than the husband is a moral wrong, and the State, as the custodian of public morals, should step in to prevent moral wrongs, as far as intelligent public opinion would support it.

(4) Public feeling in this country is much stronger than in other countries against sexual intercourse with a girl by a person other than the husband, and it will be in consonance with this feeling if the age of consent outside the marital state is raised.

(5) According to the Shariat of Islam cohabitation by a male with any woman other than his wife even with her consent is rape, irrespective of the age of the female; and the legislature will, by raising the age of consent bring the law nearer to the Mohomedan law, and in conformity with the notions of the Muslim Community.

(6) According to the Indian Majority Act, a girl attains majority at the age of 18, and she is regarded a minor till she attains the said age. Till then, she is not competent to contract or to deal with her property in any manner. It is strange that the law allows her to deal with her honour, when she is more than 14 but less than 18, when she cannot legally even deal with her property or enter into any Civil Contract.

For these reasons, I am of opinion that the age of consent outside the marital state should be raised to 18 years, but social legislation to be effective, should be gradual and 16 should therefore be fixed at present, as the age of consent outside the marital state.

(ii) I am of opinion that the law relating to the age of consent within the marital state, should be retained as it is.

Reason.

(1) As observed above, the Hindu Shastras and the Mahomedan Shariat confer upon the husband the marital right of enjoyment any time after marriage, and any limitation of that right constitutes an encroachment upon it.

(2) A Government and particularly a Foreign one, should be loth to interfere with the religious rights and notions of its subjects, as far as possible.

I am conscious of the fact that the present law is also an invasion upon the said rights of husbands, but the effect of the invasion is not appreciably felt and resented, because cohabitation with a wife under 13 years of age is rare. If the age is raised from 13 to 14, the impact of this invasion will be appreciable, and there will be a great outcry among the people against the proposed legislation. The present law on the point, though constituting an interference with religious rights, is accepted, without demur, because people believe it to be an act of cruelty and hardship to cohabit with a girl under 13.

(3) There is a certain privacy between a husband and his wife. The Evidence Act recognises this privacy (*vide* Section 122), and it should not be interfered with, by penal legislation. By raising the age, the scope of this interference is considerably enlarged, and I am therefore emphatically against it.

(4) Even a single lapse from the course of conduct prescribed by the law, will be punishable, and the wife would be an indispensable witness for the prosecution, and once the wife has given evidence against the husband, discord in the family will be inevitable, the harmony of the marital tie will be broken and the peace of the family will be destroyed for ever.

(5A) A rise in the age of consent within the marital state, will leave the door wide open to the play of malice, and the sanctity and privacy of home will be rudely shaken in view of the domiciliary visits by the investigating staff consequent upon any application; and such visits will undermine the reputation and prestige of the husband and his family.

(6) The law which is supposed to be the common sense of the nation, should be in conformity with custom unless the custom is outrageous to notions of morality. Although every one is presumed to know the law, it will be long before the knowledge of the rise in the age of consent, will penetrate into the remote villages, and ignorant persons will be the victims of the law. A violent break with the existing custom is undesirable. The proposed law is so antagonistic to present customs and notions, that few people will presume it to be the law.

(7) A girl of 14 being more intelligent than a girl of 13 will be a more capable instrument in the hands of her parents, for laying false charges of rape against husbands in case the parents desire for one reason or another to have a divorce from the husband or separation between the wife and the husband. Such a situation is likely to crop up in those cases where marriage take place during infancy and where the parents of the girls realize at a later stage, the folly or the inequality or the inadvisability of the match.

(8) The change in the age of consent within the marital state from 12 to 13 is not given a sufficient trial. No advance should be made until the change of 1925 is given a fair trial.

3. The crimes of seduction are frequent in this part of the country, and of late, the tendency is towards the increase. The crimes of rape are not frequent. The amendment of the law made in 1925 has not altered the law relating to seduction, as provided for by sections 356 and 356A of the I. P. C., and therefore could not have any effect in preventing or reducing cases of the improper seduction of girls for immoral purposes. The law as contained in Sections 356 and 356A prescribes a deterrent punishment for those who seduce girls or traffic in them, when the girls are under 16 and 18 respectively, and therefore the change of law in 1925 could not have any effect on seduction of girls between 12 and 14, which were punishable even before the said amendment. The amendment of the law made in 1925 raising the age of consent to 14 years outside the marital state has not been in force for an adequate period to furnish sufficient data for a definite conclusion on the question of prevention or reduction of the crime of rape. In course of time, however, it is bound to have an appreciable effect, as the knowledge of the law re age of consent filters down to the masses. The proposed increase from 14 to 16 will have a very marked and important effect in this direction.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has not been effective in protecting married girls against cohabitation with husbands within the prescribed age limit because the change in the law is unknown to most of the people.

(1) The consummation of marriage is not postponed owing to that legislation for the same reason. Even among people aware of the change, it has not produced any substantial effect, because many of the people, who know of the change are too advanced to consummate the marriage before the wife becomes physically fit for intercourse and some who are hard-hearted, think that the intercourse between husband and wife is very private, and that their consummation will not probably come to light, and that they will therefore not be brought to book. However in communities, in which the *Ana* ceremony is openly performed, the amendment will have the effect postponing the said ceremony and therefore the consummation of marriage till the prescribed age.

(2) The change in the law has not stimulated public opinion, because the knowledge of the amendment of the law is not widely diffused. Those who are ordinarily likely to know of the amendment are sufficiently advanced to postpone consummation of marriage, till the girl is physically fit for intercourse, and no penal legislation is necessary for them. For the

rest the change in law has no effect on them, for the reasons stated in para. 4 (1) *supra*.

(3) The amendment of 1925 has not resulted in putting off marriage beyond the age of 13. The amendment related simply to consummation of marriage, and did not affect the performance of marriage before 13, and as such the said amendment has no such effect.

5. The usual age at which girls attain puberty in this part of the country is 13. The girls, who have not to do manual labour and are better placed in life, attain puberty at about 12½ and those girls, who live in villages and who do manual work generally attain puberty at 13½. The age of puberty is different in different castes and communities and it varies according as the girls do or do not do manual work. It partly depends on social environments also.

6. Cohabitation is not common before puberty in this part of the country except amongst the Brahmins and the Banias, but it takes place soon after puberty within the marital state. In some communities like the Nagers, the Brahma Khastriyas and the Parsis, a girl is usually married after she is 16 and hence there is no cohabitation among them soon after puberty, but it takes place nearly 3 or 4 years after puberty. Cases of rape upon girls under 13 outside the marital state very rarely come to Court. Only one case of rape by a husband upon his wife came to Court after the amendment of 1925. In castes like those of Kolis, Thakardas, Vaghris, and Dheds the consummation takes place, after puberty, though the marriage is celebrated usually much before puberty. In communities like Brahmins and Banias, the marriages are celebrated before puberty and more often than not, the consummation takes place before puberty.

7. There is no religious injunction so far as I know, directing consummation of marriage before or at puberty, and as such the practice of the early consummation of marriage before or at puberty is not due to any religious injunction, but it is rather due to the absence of any injunction to the contrary.

8. I am not aware of any ceremony like "Gaona" or "Garbhari" in this part of the country.

9. I do not consider the attainment of puberty a sufficient indication of physical maturity to justify consummation of marriage in all cases. There are a few cases, in which girls attain sufficient maturity to justify consummation of marriage immediately after the attainment of puberty, but in a large majority of cases, it is desirable to postpone consummation of marriage for 2 years after the attainment of puberty, when a girl's physical development may be considered to be enough to justify such consummation without injury to her own health and that of her progeny.

10. In my opinion a girl in India becomes competent to give an intelligent consent to cohabitation with a stranger with a due realisation of consequences at the age of 18. In a majority of cases of rape, the victims are of an age between 14 and 18. No doubt girls between 14 and 18 do understand what they are about at the time of the sexual intercourse, but I think they do not then realise the consequences of that act. They are not sufficiently mature and intelligent to understand the full nature and shame of the act or the degradation and ruin it implies, till they attain the age of 18 years. For this reason, I am in favour of raising the age of consent to 18 years outside the marital state, but I am of opinion that the age of consent be raised to 16 at present, simply because legislation must move slowly and continuously in such matters. Some time after, the age of consent without the marital state should be raised to 18 years.

11. There are many cases in which cohabitation before puberty, or after puberty before full physical development of a girl has resulted in injury to her health and body, and has affected her progeny.

12. Early consummation and early maternity are responsible for high maternal and infantile mortality only to a very slight extent. If we com-

pare the maternal and infantile mortality of high class Hindus such as Nagars and Brahman-Khastriyas, in which communities girls marry at about 18, with that of the low caste Hindus such as Thakardas, Dhedas and Vaghriis, who generally consummate marriage, when the girls attain the age of 13, we do not find any material difference. In my opinion, the high maternal and infantile mortality in India is due to the insanitary habits of the people, the food of the people (which is usually not nutritious) the insanitary, unhealthy and ill-ventilated houses, in which the people live, and the absence of physical exercise in girls of high class families.

13. The amendment of the law in 1925 as far as it affects cohabitation within the marital state is not widely known and has not produced any effect. The amendment of the law in 1925 increasing the age of consent outside the marital state is welcomed. There was a dissatisfaction about the state of the law as to the age of consent in extra-marital cases from a pretty long time, and people are in my opinion, quite ready for an extension of the age of consent in extra-marital cases but not in marital cases.

14. Among the Hindus, educated women do not favour early consummation of marriage of their children, but uneducated and orthodox women favour consummation of marriage of their daughters or daughters-in-law soon after puberty. Among the Muslims a majority of women do not favour early consummation of marriage of their children.

15. Difficulties are experienced in determining the age of girls in connection with offences, under Sections 375-376, I. P. C., and several other offences such as those under Sections 363, 366A, 366B and others. This is due to the fact, that the name of the child is not entered in the register of births. It is not entered, because a child is named several days after birth, and the birth-entry is made before the child is made. In my opinion it should be made compulsory for every parent to give information of the name of the child within a month after its birth and a column in the register of births should be added for entering the said name. That column may be kept blank at the time of the first entry, but it should be filled up within a month thereafter. Secondly, proper vaccination registers should be maintained and preserved. Vaccinators should be ordered to verify the birth dates of the children from the birth registers and copies should be freely given from vaccination registers. Thirdly, it should be made compulsory for the headmaster of a school to verify the birth date of a student as given to him, by reference to the birth register or the evidence of respectable witnesses where the same is not procurable.

16. No.

17. First part—Yes.

Second part—I agree to the punishment prescribed in the new draft Sections 376 and 376A.

18. Offences without the marital state should be cognizable and triable by the Court of Session, as at present. Offences within the marital state should be non-cognizable, and triable by first class Magistrates. I agree with the draft amendment in Schedule II of the Code of Criminal Procedure.

19. No.

20. I think that legislation fixing the minimum age of marriage will be more effective than penal legislation fixing a higher age of consent for marital cases. Public opinion among the Muslims seems to be against both these alternatives.

21. I prefer to rely more on the progress of social reform by means of education and social propaganda than on the strengthening of the penal law. We already see the effect of the progress of education and social reform in the higher classes of the Hindus and the Muslims and in the Parsis. Similarly the progress of education and social reform will raise the age of the consummation of marriage among the other classes in course of time.

General.

I approve of the draft sections subject to the following changes:—

- (1) *Omit* the words "the wife not being under thirteen years of age" from exception to Section 375, I. P. C.
- (2) *Omit* the words "the wife not being under thirteen years of age and being under 14 years of age" from Section 376A and substitute the following words for the same "the wife being under 13 years of age".
- (3) In Section 376A of the Indian Penal Code and in Column 2 of Schedule II of the Criminal Procedure Code against Section 376A, the words "premature married intercourse" should be substituted for the words "Illicit married intercourse". It shocks the feelings of orthodox people to see intercourse between husband and wife called "illicit" married intercourse, hence the description should be changed as suggested by me.

**Oral Evidence of Mr. ISMAIL I. CHUNDRIGAR, Honorary Secretary,
Anjumani Islam, Ahmedabad.**

(Ahmedabad, 18th October 1928.)

Chairman: Are you the Honorary Secretary of the Anjumani Islam?

A. Yes.

Q. What is the membership of the Anjuman?

A. About 200.

Q. How long since has it been in existence?

A. Since 1888.

Q. May I take that the views which are expressed here are the views of the Anjuman?

A. The reasons which are given in the statement are my own, but the conclusions are those of the members of the Anjuman.

Q. Do you think I am correct in saying that the trend of your evidence is that with regard to the Age of Consent outside marital relations the age can be fixed anywhere we like?

A. Personally I am for raising it even to 18. But if you want the rise to be gradual, you should as a first step begin with 16.

Q. And inside marriage, you are opposed to raising the age because Quranic limit and custom come in your way.

A. Inside marriage, the life between the husband and the wife should be private and there should be no interference from outside.

Q. Would there be any objection on your part to penalising marriages below a certain age?

A. There would be some cases in which there will be certain difficulties. The girl may have her father only and nobody else to take care of her. In that case the father may want to marry the girl at an early age.

Q. That can be covered by exemptions in special cases as it has been done in the Baroda State.

A. As far as the fixing of the age of marriage is concerned, that is the only objection. If such exemptions are allowed, there will be no objection.

Q. When the question was discussed by the Anjuman, was this fact before the members of the Anjuman that medical opinion is that if girls become mothers before 16, it is detrimental not only to themselves, but also to their progeny?

A. The Anjuman did consider it and they were of opinion that simply early marriage and early consummation were not the only cause. They considered early consummation as one of the causes. By a comparison of the mortality in the Nagas, Brahma Kshatriya and communities in which girls are married late and other communities in which girls are married earlier, it was found that there is not much difference in the mortality.

Q. You say that amongst Nagas and Brahma Kshatriya communities in which girls are married at about 18 the maternal and infantile mortality is the same, as in other communities in which girls are married earlier. How did you compare that?

A. I come into close contact with several families of all castes.

Q. There is no registration by castes as in the case of Hindus and Mohammedans. What is then your authority for saying that amongst the Brahma Kshatriya community the mortality is the same?

A. My basis for saying that is that amongst the Brahma Kshatriya community consisting of about 200 families, there are 3 or 4 deaths due to child-births in a year, even though their girls are usually married after 18.

Q. Do you know if they get proper medical attendance?

A. Yes; because they are one of the most advanced communities.

Q. What do you think is the death rate under the same circumstances in other communities?

A. In other communities, I think it would be almost the same.

Q. One witness told us that amongst the Brahma Kshatriya community the girls and infants are much better than amongst other people for their girls are educated and are married and have children after 18. Is that not a fact?

A. I do not think so.

Q. In answer to question 20 you have said that the fixing of the marriage would be more effective than legislation about the Age of Consent. What age would you fix for the age of marriage?

A. Public opinion generally among Muslims seems to be against this. But I personally am for 14.

Q. And for boys?

A. In the case of boys 18 should be the minimum.

Q. Up to 13 the law was practically a dead letter. If it is raised to 14, it will clash with the actual custom. Is that your opinion?

A. Yes.

Q. Do you think that even amongst Mohammedans there is consummation before 14, but not under 13?

A. I should think there is about 10 per cent. of marriages below 14.

Q. In para. 21 you say that you rely more on education and social propaganda to bring about the desired reform. How much time do you think we will take to get our object, namely, putting off early marriage and early maternity?

A. It will take about 10 years at least provided there is a great deal of propaganda. Of course if things are as they are at present, it will take a longer time.

Q. According to Mohammedan Law is the consent of the girl to the marriage a *sine qua non*, a thing without which marriage will be ineffective and illegal?

A. There is a difference. If the girl has attained puberty, she is a major for the purpose of marriage. In that case her own consent would be necessary for entering into a legal contract of marriage. If she is a minor then she can be given in marriage either by her father or grandfather. If she had been given in marriage by the grandfather or father, she cannot repudiate the marriage after she has attained puberty. If

she had been given in marriage by her mother or uncle she can repudiate the marriage.

Q. Take the case in which the girl has been given in marriage by her mother or uncle where she has the right of repudiation; do you think that when the girl attains puberty, say at 13 or 14, she is able to give an intelligent consent?

A. Generally not.

Q. You hold that for the purpose of marriage or connection there can be no intelligent consent till the girl is 18, but as a compromise and as a first stage we should fix 16.

A. Yes.

Q. You say that outside marriage intelligent consent cannot be given even by a girl of 18.

A. Yes.

Q. Whether for the purpose of marriage or for connection outside intelligent consent cannot be given till she is 18 or as a compromise 16.

A. Yes.

Q. Is that one of the reasons why you say that we should have 14 for marriage if there is a marriage law?

A. Yes.

Q. You suggest 14 as a first stage in the onward march or would you take 14 as good enough for all times?

A. I suggest it as a preliminary step.

Mrs. Beadon: Would you mind letting us know a few cases which have come to your knowledge in which there was injury to the girl?

A. There was a case in my neighbourhood where a girl delivered at the age of about 12½ and the result was that the child died 3 days after and the mother died 12 or 13 days after delivery. That is about 2 years ago. It was a case of a Mohammedan, but such cases are rare.

Chairman: I may tell you that among the lower classes among the Mohammedans there are many child marriages?

A. Yes, there are.

Mrs. Beadon: Any other case?

A. There was another case of a Hindu in my locality. The mother died after a few days of delivery and the child died a little later. I may say this that as there are cases of deaths in very early age, there are also cases of deaths in a later age due to insanitary conditions and malnutrition.

Q. Were those people fairly well off?

A. No, they were poor.

Q. Have you met any other cases like these in your experience during the last five years?

A. About a dozen. Children of these young mothers are weak.

Q. What is your opinion about it? Are they fairly well off or are they generally in any way below par?

A. There was a baby show the other day and the photo of a boy was published in the *Times* as the healthiest baby and that was given birth by a girl who was very young.

Q. Was that in Ahmedabad?

A. That was in the Bombay Presidency.

Q. Do you know anything about the birth registration? Is it fairly satisfactory?

A. Yes. The names are not entered. That is why I have suggested that there should be a column for the name and it may be filled in subsequently. Just as it is compulsory now for parents to give information of the birth of children it should be compulsory to give the name of the child.

Mrs. Nehru: In reply to question No. 2 you say that Hindus and Mohammedans according to the Shastras and Shariat give a husband an indefeasible right to sexual intercourse with his wife at any time. What is your personal opinion about it?

A. That depends on the text. Personally I do not recognise it; we must have respect for the health of the other party.

Q. Does your statement mean that you are against social legislation on religious grounds?

A. I have not referred to the views of my own but to the views of the majority of the people.

Q. I am asking about your personal views.

A. Whatever my personal view may be I must respect the views of the large majority of people. Looking to the general view of the people at large I would not personally advocate this legislation.

Q. Cannot you disassociate yourself for a short time from the public and say whether it is right or not?

A. If I am not to take into consideration the views of the people at large I would be in favour of this legislation.

Q. Are you in favour of raising the Age of Consent in case marriage legislation is not possible?

A. No. In the married life there should be no interference between husband and wife.

Q. Even if it may lead to the deterioration of the whole nation?

A. I think there is a danger if there is a law.

Q. But it has existed so far. Has it produced any undesirable results?

A. Undesirable results would follow if the law is put into operation. There was only one case in which the law was put into operation in Ahmedabad.

Q. Was it because the age was so low or because of anything else?

A. I think one reason was that the age was so low and the other is that such cases are not generally brought to light.

Q. What is the reason?

A. The reason is that the wife or her guardians are not willing to bring these cases to light because if once a case of this kind comes to court, harmony between the husband and wife is broken and for the whole life this married couple would not be able to lead a happy life. Even if you fix the Age of Consent there would be nothing like the rights of wife.

Q. Would you approve of the idea of taking bonds from the parents of the boy or the girl to keep the two separate till the prescribed age?

A. You mean to say that offence brought in the first case should not be punished but only bonds should be taken to separate the two for the period of the prescribed age.

Q. So I suggest.

A. Supposing the bonds are broken what will be the result?

Q. Then there will be penalty.

A. Yes. To a certain extent. I would personally think that in such cases legislature should not intervene unless the social views of the people are advanced materially. You can only force a minority of the people by legislation but you cannot force a majority of the population.

Q. Have you considered the bad effects. Are they not due to this reason?

A. There are several contributory reasons.

Q. 25 per cent. of the new born babies die within one year and the number of casualties among girls are double than among boys?

A. Supposing medical opinion is accepted.

Q. But medical opinion is based on facts. On that basis would you still like that religious notions of the people should be given more weight than their own interests?

A. It this were correct that these are the only reasons. I think the religious views should be set aside.

Q. But suppose it is not the only reason, but it is a very potent reason for child mortality and mother mortality?

A. I think in cases of this type first of all the majority should be brought around to our standard by propaganda and when there is a majority enact the law. You cannot force a large percentage to social legislation.

Q. Supposing these Sections 375 and 376, Indian Penal Code, were not there. Do you not think that in proper cases without these husbands can be punished?

A. I think there would be some difficulty in "intention" occurring in every criminal section. Unless you can say from the facts of the case that an act was voluntary or intentional you cannot bring it within the purview of this word and the husband will not be punished.

Q. You have said that even in case where the girl is below 12 years there ought to be punishment only for 2 years, whereas under the general law a husband is guilty of a grievous hurt he can be sent to jail for 7 years.

A. Grievous hurt can be punished by transportation for life.

Q. Injury caused by the husband may be more than that?

A. There is the difference of intention.

Q. You say that in these cases punishment should be only 2 years. I want to know why you want to make a difference between the husband and a stranger when the injury is so great?

A. I would make a distinction for this reason that the husband practically does a thing before a particular age which he is allowed to do after sometime. That is a thing done early that it ought to be.

Q. Cannot that be said about a stranger also? He is allowed to do the act by law after 14.

A. In the case of husband there is some difference; it is not a moral wrong.

Q. Do you think society regards it as an offence?

A. The society would regard it as offence only if there is physical cruelty.

Q. Then in the case of proved physical cruelty and bad treatment the husband should be given more stringent punishment?

A. No.

Q. You have been pleased to say that so far as girls are concerned sexual science is a sealed book to them. Is it not true of the morality of girls also?

A. Yes.

Q. You believe in the efficacy of propaganda and propaganda has resulted in public feeling wearing round the protection of the girl?

A. So far as marital cases are concerned it has not succeeded.

Q. Do you think there are any reasons to believe that we shall have more propaganda?

A. I think there will be more propaganda hereafter than it has been in the past.

Q. With regard to reasons for your maintaining the present age of 14. Your first reason is that Hindu Law and Mohammedan Law confer upon the husband the marital right of enjoyment any time. May I know the text from the Hindu Shastras or the Mohammedan Law that enjoins it?

A. As regards the Mohammedan Law I will put it that up to puberty the wife is supposed to be with the parents namely the guardianship is with the mother.

Q. You say that in your opinion if Mohammedan marriages take place very early, so that if there is a case of early marriage before puberty then there is no law among the Mohammedan. Supposing a girl is married before puberty then is not the husband the guardian till she attains puberty?

A. The girl is supposed to be with the mother and when she has attained puberty husband becomes the guardian.

Chairman: The point will be settled if the word puberty is substituted by marriage. Would you substitute the word puberty by marriage?

A. Yes.

Mr. Thakurdas Bhargava: You refer to the foreign government and indigenous government. Do you think that the Assembly is more representative than it was in 1891 when they raised the age to 10?

A. It has become more representative.

Q. Would you like this that its power may be enlarged, so that it may be able to legislate on all national matters?

A. You should not go against the wishes of a large majority of the people. There will be great opposition.

Q. May I understand this will be only limited to some articles in the papers and some fiery speeches?

A. That is all the people can do.

Q. Now about the question of privacy under Section 122 of the Evidence Act. Do you think this provision would eliminate if the age is increased?

A. Private life is recognised by law.

Q. If the age is increased to 13 that privacy is not violated. There has been a violation. Section 122 is only a question of evidence that certain communications are not allowed to be disclosed?

A. Yes.

Q. And that means special privilege which does not exist between anybody else.

A. Yes.

Q. A wife is not punished if she harbours the husband?

A. Yes.

Maulvi Mohammad Yakub: You and I enjoy some privilege with reference to our clients. Law does not recognise this privacy between husband and wife only, but others also enjoy it? Is it not?

A. To a certain extent.

Mr. Bhargava: You refer to another reason in para. 7, that girl of 14 being more intelligent than a girl of 13 will be a more capable instrument in the hands of her parents for laying false charges of rape against husbands in case the parents desire for one reason or another to have a divorce from the husband or separation between the wife and the husband.

A. I mean to say that if a girl is not sufficiently developed she would become a proper instrument in the hands of others.

Q. Will a girl of 13 if tutored give better evidence than a girl of 14?

A. That is what I mean to say a girl between 12 and 14 will be a more capable instrument.

Q. Don't you think a girl of 14 will better resist this temptation and inducement?

A. Both will not be able to resist temptations.

Q. There will be very slight difference if at all.

A. Both the girls of 13 and 14 will not be able to resist the temptation but a girl of 14 will be able to give better assistance to the parents.

Q. In one breath you say that it has been a dead letter as nobody knows about a change in the law and on the other you say it has not been given a trial. How do you reconcile the statements?

A. There is no contradiction. If it had remained in force people would have gradually known it and when it is a dead letter to-day it has not come into force. If there were publicity, it would have been all right.

Maulvi Mohammad Yokub: You think there is no corresponding dissatisfaction among the people with Eastern culture?

A. No.

Q. Do you think that Eastern culture and education do not take any care about the health of the girls?

A. I think it takes much less care.

Q. What do you mean by Eastern culture?

A. People who have received simply Urdu, Sanskrit or Arabic education are of Eastern culture.

Q. And people who have received English education are of Western culture?

A. Yes. It has degenerated to some extent.

Q. Has the culture degenerated or the men who receive it?

A. I think the degeneration is with the men. The difficulty is with the manner in which the culture is imparted.

Q. As regards extra-marital cases there is no dissatisfaction among the uneducated people. Do you mean to say uneducated people are not ignorant of the law?

A. Outside the marriage age they are not ignorant.

Q. If they know the law it must be presumed that they know the law of both?

A. We cannot presume that because a man knows one thing he knows the other.

Q. How is it that the illiterate people know about extra-marital and not intra-marital law?

A. Within marital relations there is a provision of consent, but the notions of the people are such that they do not regard the consent necessary in the case of wife.

Q. Does this law of extra-marital cases not conflict with their custom?

A. Everybody knows that without consent it is an offence. They do not know within marital relations that they have to obtain the consent, if she is not of a particular age.

Q. You say that it is the opinion of those whose minds are inoculated with Western ideas. Do people think so or you also think so?

A. Personally I do not. What I mean to say is that Shariyat does not place any restriction after puberty.

Q. You yourself quoted one instance that a wife could refuse cohabitation with her husband.

A. There are certain instances in which a woman can refuse.

Q. You said that after puberty a husband has unlimited right to cohabitation.

A. Yes, subject to power.

Q. You know according to Hidaya the age of puberty is 15 years. The puberty of a girl is established by menstruation or nectral emission and if none of these have taken place then it is 17 years. What is here advanced is 2 disciples maintained that a boy or girl completing 15 years is to be declared an adult. There is also one report of Abu Hanifa to the same effect and Shafi concurs in this opinion.

A. If there is menstruation before 15 then puberty is attained before 15. I may mention here that according to rulings of High Courts the opinion of the 2 disciples is preferred to the ruling of Abu Hanifa.

Q. If 15 is fixed for marriage would you object?

A. Personally I would not, but I would prefer 14 in the beginning. In the large majority of cases puberty is attained at 13.

Q. Do you think soon after puberty a girl is fit for consummation?

A. I have left one year's margin.

Q. You would not object to legislation for fixing an age for marriage?

A. That is my personal opinion if I disregard the opinion of the public.

Q. Are the notions of the public based on any religious injunction or are they simply notions?

A. Of course there is no religious injunction. Among Mohammedans as far as I know there is no specific injunction to give a girl in marriage before a particular age.

Q. And therefore legislation will not interfere with the religious injunction.

A. But it would interfere with the notions and customs.

Q. You say that 90 per cent. of the Mohammedans here in Ahmedabad and Gujerat marry their girls after 14?

A. Yes.

Q. Yesterday a witness said that among Mohammedans girls in Ahmedabad are married especially among the advanced Mohammedans at 12-13. Was he not right in his statement?

A. No.

Q. Do you think they are married between 13 and 14?

A. I think in about 10 per cent. cases marriages take place before 14 and in 90 per cent. cases after 14.

Q. And are those early marriages among the poor classes?

A. Not necessarily poor but uneducated classes.

Moulvi Muhammad Yakub: You know that according to Mr. Amir Ali even when the Nikah of a minor girl is performed by the father or the grandfather the girl has the option of repudiation.

A. I think that is not the accepted opinion. He has made some observations to that effect. He has expressed that opinion. He has cited some authorities for this purpose. But that is not the accepted opinion.

Mr. Mitra: According to the Shariat, is the mother a guardian of the person of her daughter till she attains her puberty the age accepted for which is 12 years?

A. My answer to that question would be that a mother is entitled to the custody even of her married daughter till she attains puberty and puberty is presumed to have reached when a girl begins to menstruate or when there are no signs of menstruation at 15.

Q. In answer to question No. 8 you say that it is desirable to postpone consummation of marriage for two years after the attainment of puberty. So apart from any injunction or the Shariat, would you personally prefer that no consummation should take place till the girl is fully developed.

A. Yes.

Q. There has been a suggestion that there should be some enactment by which the mother may be made the guardian of the person of her daughter till she attains that age, i.e., 15. Most have accepted 18. There has been no commotion, no Shastras or the Shariat has been quoted against 18. It is purely a mundane affair.

A. But I think that will not serve the Indian conditions. Even if there is any law like this still it is open to a guardian to hand over the custody to anybody else. For that reason legislation of that type will not attain the object in view.

Mr. Mudaliyar: May I understand from you as in answer to my friend you said that you did not press this reason which you have given about a foreign Government being incapable of enacting religious and social laws and for saying that it should be loth to have legislation which the people do not approve of, that you still stick to it?

A. I do.

Q. Supposing the Government remain neutral when this legislation comes up, they neither say "aye" nor say "Nay", they leave it purely to the non-official vote of the Legislative Assembly and if that legislation is adopted, would you have any objection?

A. I would not.

Q. So far as consummation below 13 is concerned I understand that the people look upon it as a cruel act and therefore are against it. You yourself have said that consummation does take place before 13 among the Brahmins and Banias, particularly even before puberty. Can you suggest any means, apart from social propaganda by which this evil can be checked?

A. The best thing would be to induce the caste panchas to have resolutions of this type.

Q. But, do you realise that the conscience of the caste panchas will not be higher than the general community?

A. It will be slightly higher.

Q. Not appreciably?

A. Even appreciably. A man's individual opinion may be against a particular good thing, but when there is a caste assembly one has to consider his decision with regard to that thing.

Q. Supposing you are able to convert the caste panchayat to that view, what would be the sanction behind this caste panchayat for enforcing this decision?

A. Outcasting and fine.

Q. Do you think, even if the caste is strong against it, as you and I think it is, the remedy of outcasting would be resorted to in all cases?

A. It is likely.

Q. You said in 90 per cent. of the cases, so far as Mohammedans are concerned marriage takes place after 14. It is only a small minority of 10 per cent. in whose case cohabitation takes place before 14. In that case would you not think that that small minority could be coerced to be brought into line with the majority and accept 14 as the age of consummation?

A. I would not, and for this reason. These 10 per cent. look very small when compared with 100. But these 10 per cent. are not scattered over all communities. They form certain groups. It would not be advisable therefore to bring them round by legislation. If there are very large groups they ought to be taken into consideration.

Q. Then will you allow the things to continue as they are.

A. What I mean to say is that there should be no interference in these marriages.

Q. These considerations do not apply to the age of marriage. As far as the age of marriage is concerned, you can fix an age and give proper exemptions.

A. I have got no objection.

Q. And the community would not object so far as the age of marriage is concerned.

A. If the exemptions are liberal they would not object.

Q. You said they should be based on certain accepted principles. Wherever those principles apply those exemptions will be given.

A. What I mean is that suppose a man has got a daughter and no other child the authorities may not consider that as a sufficient ground. The word "exemption" should be construed liberally. Such like cases which I have referred to should be considered.

Mr. Kadri: You are in favour of fixing the age of marriage at 14. Would it not be an anomaly to have the Age of Consent at 13?

A. It would not be for the reason that I do not want interference between the life of the husband and a wife.

Q. All the same if marriage before the age of 14 is not permitted, surely there can be no consummation. There would be consummation only if marriage has taken place at an earlier age. Is it not like that?

A. After some years, say, after 5 or 10 years; if the marriage law is passed to-day, there would be no case before 14.

Q. Do you think that girls below the age of 15 require to be protected?

A. They do not require protection in all cases. I think it would be better to postpone consummation till that age.

Q. Will it not be better to bring both the laws into line?

A. Both will come into line after sometime.

Q. Do you want to postpone the Age of Consent law for sometime?

A. For the reason that interference in these matters would be resented by the people, we should resort to means which are less interfering and likely to cause less resentment.

Q. Koran does not lay anywhere that consummation should take place soon after puberty.

A. No.

Q. Is this left to the good sense of the people?

A. Yes.

Q. One of our witnesses has said that the object of marriage is to produce "auladasaleh", i.e., those who are fit to serve God and His creatures. If we are satisfied that Auladasaleh cannot be produced unless the father and the mother are both fully developed, why not fix an age till such children can be produced?

A. What may be possible in one case may not be possible in another case. If there is a general legislation the Islamic ordinance would not apply to all cases. Those good children could be produced in some cases.

Q. But those good children could not be produced before 15. Would you not approve of this legislation then?

A. Looking at it from the point of view of Muhammadan Shariat, I will say that if the object is to produce Auladasaleh why keep back those who can be produced? Some girls are fully developed at 14. Why not produce Auladasaleh when you can do it, if that is the object of marriage?

Q. You say in certain communities marriages take place at a very early age. May I know which those communities are?

A. Ghanchies, Schiphas and such other low class communities.

Q. Do you think they would constitute the 10 per cent. that you speak of?

A. Along with the stray cases in other communities they would constitute 10 per cent.

Q. So far as general customs are concerned about the marriageable age among Mohammedans you don't think that legislation would interfere with the practice.

A. It would not.

Q. Would it interfere with the Shariat because no age has been fixed there?

A. It would interfere in the sense that it would punish an act which is allowed by Shariat.

Mr. Kanhaiya Lal: You have said that it is desirable to postpone consummation of marriage for two years after the attainment of puberty. Is the reason for that recommendation that the injury to the mother and her progeny might be obviated?

A. Yes.

Q. You think there are cases in which recommendations of this nature are discarded in practice by the people?

A. Yes.

Q. Would you not consider it desirable if such cases occur that there should be some method adopted in order to check this evil?

A. The existence of the evil is so small when compared with the disadvantages which will accrue that it is not desirable to interfere by criminal legislation.

Q. Suppose we provide certain adequate safeguards would you then like to have some sort of check on this evil by legislation rather than wait indefinitely for social reform to produce the desired effect in a community which is largely uneducated?

A. It is not possible to give an answer until you tell me what those safeguards are.

Q. If you make the offence non-cognizable there is no chance of action being taken except on the complaint of a responsible individual.

A. In that case there would be only two dangers. One danger would be that the husband and the wife would be estranged for life and the second danger would be that in some cases out of enemy or other things false cases may be brought forward.

Q. Suppose we make the marital offence compoundable. That will be one safeguard against the husband and the wife being estranged from each other.

A. If the offence is made compoundable few cases would be tried by courts. The husband will always get the offence compounded. It would defeat the very object of law.

Q. But the danger you feared would be minimised.

A. It would be considerably minimised. The object of law would vanish.

Q. Would not the dread of punishment itself have a moral and educative effect on the people?

A. But if it is compoundable the dread of punishment would be no more.

Q. If it is made compoundable with the sanction of the court would it not serve some purpose?

A. Then it would serve some purpose.

Q. Another suggestion has been made that in such cases, i.e., marital cases, instead of the case being referred to the ordinary courts a preliminary enquiry might be made by the magistrate and after that if he finds there is something he may transfer the case to a matrimonial court which should consist of either a magistrate and two non-officials or purely of non-officials. Do you think that that will inspire greater public confidence and help in expediting the case?

A. No, I don't think so. Even now we have the jurors and the assessors and the people have more faith in the opinion of the judge than these people.

Q. But would not a matrimonial court be better fitted than the ordinary criminal court to try these cases?

A. There would be very few convictions if there is a matrimonial court.

Q. But the chances of harassment will be very much reduced.

A. Not necessarily.

Written Statement, dated the 13th August 1928, of the Bar Association, Ahmedabad.

1. There is no dissatisfaction with the present state of the Law as to Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code, but we think that the Age of Consent requires to be raised.

2. We are not for retaining the present law; we are for substituting "eighteen" for "fourteen" in Section 375 and we advocate at the same time to put the age from thirteen to fifteen (complete) in exception of Section 375. Cases have been found where defences are taken that the girl is of 14 years while from the development of the body she cannot be of that age. We think that in extra-marital cases the law should be more stringent and it is desirable that the age be raised to 18 years. In view of our above reply if any change in the law of kidnapping, viz., Section 366, is necessary, the legislature may be moved to do so.

3. Crimes of seduction and kidnapping are frequent in our part of the country, but not of rape. Offences against husbands are not frequently reported and such cases do not come to Court. Though there are no statistics to show that after the amendment in 1925 of the law, cases of rape are prevented or reduced, but we firmly believe that amendment as suggested in our reply to question 2 will meet with the requirements.

4. Ordinarily even now after the amendment as well as before when the Age of Consent was 12 years, the consummation in some classes was postponed to 15 or 16 years. Only in rare cases consummation was expedited or hastened. We are of opinion that the age of marriage for a girl should be 14 years, as generally in this country puberty is attained at that age. It will be more effective in that connection by (2) and (3). Gradually the public opinion in this connection will be stimulated and marriage will be put off beyond 14 years.

5. In our part of the country the girls attain puberty generally at 14 years.

6. Cohabitation in this part of the country is rare before the girl attains 14 or 15 years. It is rare before puberty or soon after puberty.

7. There is no religious injunction. There is no practice of early consummation of marriage before or at puberty, but if there are some cases found they are due to the false prevailing conservative ideas of some parents that the girls should go to their husbands before puberty. There is no authority for the injunction and there is no penalty prescribed for its breach.

8. In Gujarat, so far as we know there is no "Gaona" or "Garbhadan" ceremony performed. It is ordinarily not known in this part of the country.

9. Attainment of puberty is never an indication of physical maturity to justify consummation of marriage. Girls may attain puberty, but physically they may be so unfit for cohabitation that if a girl were allowed cohabitation there would be a premature break down, consumption and eventual early death. At least one year after puberty (i.e., completion of age of 15 years) a girl's physical development would be considered enough to justify consummation without any injury to her own health or that of her progeny.

10. We think that a girl in India would be considered competent to give an intelligent consent to cohabitation at the age of 18 years.

11. There are many cases where the girls have suffered by early consummation and remained physically weaklings and have died premature deaths.

12. Early consummation and early maternity no doubt are responsible for maternal and infantile mortality, but that is not the only reason for the same.

13. There is no doubt a further development of the public opinion on this side of the country for the extension of the Age of Consent in marital and extra-marital cases, but it is mainly confined to educated and civilized communities. It cannot be said to be general.

14. Certainly not, they are rather against. Parents wish to prolong it as far as possible.

15. Sometimes, difficulties are experienced in determining the age of girls and for remedying this difficulty registration of births should be made compulsory and vaccination register should be regularly maintained.

16. The difficulty would not be reduced by raising the Age of Consent.

17. It is necessary to separate extra-marital and marital offences into different offences and punishment also different. We approve of the punishment of marital offences and extra-marital offences as suggested in the draft Bill.

18. For marital offences we think the trial should be by the Court of Sessions only. The offence should be treated as non-cognizable, and in case any inquiry is to be made by the Police, it should not be done by an officer below the rank of the Inspector of Police.

19. No safeguard can be suggested, so far as collusion is concerned.

20. Fixing the minimum age of marriage and postponing consummation is difficult to be checked and breach of it difficult to be detected. Fixing higher age of marriage is likely to be more effective. The educated public would favour the remedy of raising the age of marriage.

21. We are for ~~the~~ ^{the} ~~enactment~~ ^{enactment} of law and not to solely depend on progress of social ~~reform~~ ^{reform} and social propaganda. The wheels of the latter move very slowly. Legislation may expedite and help the progress of social reform.

Oral Evidence of Mr. RATILAL JIVANLAL LAKHIA, Government Pleader, Representative of the Bar Association, Ahmedabad.

(Ahmedabad, 18th October 1928.)

Chairman: Are you the President of the Ahmedabad Bar Association?

A. No; Mr. Hoshangi Barjorji, a Parsi gentleman is the President. I am a member of the Bar Council.

Q. Is this a Bar Council formed under the new Act?

A. No. We have got our own Bar Association and a Managing Committee consisting of 4 members to attend to the management and routine work. I am a member of the Managing Committee which is otherwise called the Bar Council.

Q. Where were you before you came to Ahmedabad?

A. I was in Kaira for 4 years as a Government Pleader, and before that for 10 years as Assistant Government Pleader.

Q. To what community do you belong?

A. Brahma Kshatriya community.

Q. Are there many Brahma Kshatriyas in Kaira?

A. No; but they are found in large numbers in Ahmedabad, Surat, Broach, and Deccan Hyderabad.

Q. How many years have you been Government Pleader here?

A. I have been Government Pleader and Public Prosecutor here for the last 2 years.

Q. How many years' practice have you got?

A. My practice extends to 17 years.

Q. In your answer to question 6 you say that cohabitation in the part of the country is rare before puberty and soon after puberty. But we have been told that among the lower castes there is early marriage and early consummation; and that it is also the case with husbands above 30 or 40 marrying girls of 13 or 14. Is that so?

A. I agree with that. But the opinion given in the statement is the opinion of the Bar Council.

Q. We have been told that among the lower castes and among aged husbands it is common before puberty. Do you know of instances of early cohabitation before 13 or 14?

A. My general experience is that that statement is correct. I have heard of several cases of that kind.

Q. Would you be able to say that in any particular community here marriages take place before 14?

A. I think it is common amongst the Kunbi community. Amongst them on account of early marriages consummation sometimes takes place before puberty.

Q. What is the age of puberty amongst those girls?

A. It is generally 14. Kolis are also one of the backward classes in Gujarat. In these castes the age of puberty is about 15 or 16 because they are working class people.

Q. In your community what is the age of marriage of girls?

A. It is generally 18 for girls and about 25 for boys.

Q. Are there a large number of educated people in your community?

A. Yes; tolerably well educated people.

Q. Can you say that they are more educated than the rest of the people?

A. Yes. The Nagars are also an educated community.

Q. Do your girls go to colleges?

A. Yes, they do, some of them are graduates and M.A.'s.

Q. Would you be able to compare the condition of your girls and their progeny with the condition of the girls of other Hindu girls who are married at a lesser age?

A. Our girls maintain a better constitution and a better progeny than those girls who marry earlier. There are some girls in my community also who are married early, and any time girls who are married about the age of 18 certainly maintain a better constitution and have better progeny. I am decidedly of that opinion.

Q. When do marriages take place amongst the Nagar community?

A. About 15 or 16.

Dr. Beadon: You say it is not uncommon for consummation to take place at 14 or 15? Have you known of any cases of injury?

A. As far as I can remember, there was one case which came to me in the Kaira District. That was some years ago. The girl was 11 years of age and the husband was 25 or 26. That was about 6 years ago.

Q. Why did the case come to court?

A. The girl was injured and the parents of the girl complained to the police. It was amongst the Native Christians in the Borsad Taluka. There may be several cases of that kind, but they are not coming to court mainly on account of the intimate relations between the parties.

Q. What happened in that case?

A. As far as I can remember the man was convicted. He was given 3 or 6 months' imprisonment; I am not sure.

Q. In para. 11 you say that there are many cases where the girls have suffered by early consummation. Can you give us cases from your knowledge where there was premature death?

A. I know several instances in which girls have died on account of physical weakness as a result of early consummation.

Q. Do you mean they died in child-birth?

A. Yes; they have died in child-birth; also after consummation they have remained weaklings for life. I know girls suffering from all kinds of diseases on account of consummation apart from child-birth.

Q. Were the girls in good health before the marriage?

A. Yes.

Q. How many cases do you know in the last few years?

A. At least a dozen cases.

Q. At what age did the consummation take place?

A. Generally at 14.

Q. Had the girls children in these cases?

A. In some cases there were children.

Q. Have you met any cases in which girls died in child-birth?

A. I know of only 2 or 3 cases, in which girls of 15 have died in child-birth.

Q. Were these among Hindus or Mohammedans?

A. Hindus. These happened among the Bania classes.

Q. What about the children in such cases?

A. They are physical weaklings.

Mrs. Nehru: What was the age of the Christian girl, who you said had received injuries?

A. It was about 11.

Q. To what community do you belong?

A. We were formerly Kshatriyas; but now we have turned Brahmins. We were brought to this place from Gujarat.

Q. Are there many English educated women in your community?

A. The general standard of education amongst our women is high. The number of English school going children would be 30 per cent. As for University education, one, the daughter of Sir Chimanlal Setalvad, is an M.A. Two others are graduates of the University of Bombay. But there are some who have given up study after going to college for one or two years.

Q. Do you think that these English educated girls are deteriorated in health?

A. Whether it is due to education or not I cannot say, but it is true a great deal of delicacy has come in the girls of our community.

Q. What would you put that to?

A. Want of proper exercise. They are not looking after physical exercise as they ought to.

Q. Have you any experience of any other community besides your own?

A. Besides my own community I have got experience of other communities also.

A. Do you think that girls of other communities if they are educated are weak?

A. Yes; they are weak. Girls who are not educated generally maintain a better physique than the educated girls. I think it is on account of exercise.

Q. Do you think that educated women suffer more on account of child-birth?

A. I do not think so.

Q. What about the condition of the babies?

A. The educated girls look after their babies much better than uneducated girls and the babies are certainly better.

Q. In para. 3 you say that the crimes of seduction and kidnapping are frequent in this part of the country. Is it so?

A. Yes; it is because these cases come to court. The ratio of these cases has increased recently.

Q. Would you like the age in cases of kidnapping and seduction to be raised to 18?

A. My personal opinion is that it should be 16.

Q. What would you have for extra-marital cases?

A. In the memorandum it has been suggested that it should be 18, but my personal opinion is that it should be 16. For marital purposes it should be 14. My reasons are that it would be much better if we raise the age gradually than if we leap from 13 to 15 or 16; otherwise there will be much uproar in the society.

Q. But gradual raising is not considered to be good by some.

A. The rise has always been gradual. Formerly it was 10 in 1890. After the Harimati case it was raised to 12, and in 1925 it was further raised to 13. In these circumstances I am of the opinion that the rise should be gradual.

Q. You say that in rare cases consummation is expedited or hastened. Is it on account of economic reasons or are there any other reasons?

A. This generally happens when there is inequality in the ages of the husband and the wife.

Q. In para. 7 you say that if there are some cases of consummation before puberty they are due to the false prevailing conservative ideas of some parents that the girls should go to their husbands before puberty. Is that so?

A. There is an idea amongst certain people, especially amongst orthodox people that their girls should go to their husband's houses before they attain puberty.

Q. Is it on religious grounds?

A. No; it is a false notion, but they think that there is something religious like that. If the girl does not go to her husband's house before puberty, they think that it will be a sin, and the parents will go to hell.

Q. Are the cases you mention in para. 4 due to the same reason?

A. Partly on account of this reason, and partly on account of the inequality of the ages of the parties. Besides these there is the economic reason also.

Q. Are there many marriages between young girls and elderly men?

A. Not many, but there are cases in which widowers marry again. Sometimes the age of the man is 40 or 50 and the age of the girl 14 or 15.

Q. What would be the percentage of such cases?

A. Generally it would be 20 per cent. at the most.

Q. What do you mean, when you say that you approve of the punishment of marital offences and extra-marital offences as suggested in the draft Bill?

A. I would keep the punishment as it is, that is, 2 years between 12 and 14 and below 12 transportation for life. As for the procedure to be adopted, Section 561 of the Criminal Procedure Code already provides for an enquiry and the offence is treated as a non-cognisable one. If necessary the offence can be included under Section 352 of the Criminal Procedure Code which allows the enquiry to be held in camera. All these safeguards are adequate.

Q. What is your reason for suggesting that the trial in the case of marital offences should be by the Court of Sessions only?

A. Generally in such cases the trial in a Sessions Court will be with the help of assessors, and the Court can have the opinion of the assessors, and determine whether the offence has been committed. That would be better procedure.

Q. Would it not involve more trouble and time? Would you not like a simplification of these trials?

A. I am for a simplification of these trials; but in order that there may not be much opposition, I would provide for certain safeguards.

Q. How can it be a safeguard if you put more hardship on those people who bring these cases to court?

A. It is the general belief that if there is a trial in the court of sessions, people will get better justice and the trial will be expedited. That is the notion of the public. That is why they have a greater confidence in the Sessions Court.

Mr. Bhargava: Cannot a first class magistrate be given section 30 powers and asked to try these cases?

A. I think District Magistrates would be better.

Q. But the number of cases might be large.

A. But the sentences cannot in any case be very harsh.

Q. Do you mean you would not like many cases to come to the courts? A. Why should I not. I should like that each and every person should be punished.

Q. Do you not think that cases will flood the courts?

A. It is immaterial.

Q. Supposing the marriage and the Age of Consent coincide, would it not reduce the number of cases? Supposing it is 14 or 15 in both cases, would you have any objection?

A. I have no objection.

Q. You said that there are a dozen cases of consummation due to early marriage in which the result was injurious to the girl. The girls in these cases were about 14. If the result is injurious at the age of 14 would you not have a higher Age for Consent in marital cases and fix the age at 15 or 16?

A. The idea is that there will be puberty before 14 and there will therefore be no consummation before puberty.

Q. You say that puberty is attained at the ages of 13 or 14. Would you not like that at least one year should elapse between the age of puberty and consummation? Would you not therefore fix 15 as the Age of Consent in marital cases?

A. The opinion of the Bar Council is that the age should be 15. But considering that the age of puberty is usually at 13 or 14 I have put down 14 as the Age of Consent in marital cases.

Q. Then would you change your opinion and have the age at 15?

A. I have certainly no objection to change my opinion. My only ground for fixing 14 is expediency.

Q. Would 14 be acceptable to the orthodox people?

A. It ought to be acceptable, but I cannot say whether it would be.

Q. Do you think that the opposition would be greater if the age is more than 14?

A. There would be a very great uproar if you go on making changes very often. If there is a slight change, the uproar would not be so great.

So far as the legislation with regard to marriage is concerned, we might experience in British India some difficulty as regards fixing the age of marriage. It may not be so difficult in an Indian State. The Native State is a small area; but British India covers a very large area and there will be great difficulty in having marriages registered.

Q. Why should marriages be registered?

A. How can the age be otherwise determined?

Q. If you have vaccination register or the birth register it will serve to find the age. There will then be no need for a marriage register for fixing the age. You yourself say that the age question is difficult to prove. Why should you therefore have a marriage register which will only bring in confusion?

A. If the birth registration is made properly, there is no need for marriage registration.

Q. In para. 20 you say that a marriage law would be more effective. Are you personally of that opinion?

A. If the registration of births and vaccination is properly carried out, there is no need for fixing the marriageable age if you fix the Age of Consent. But the opinion given here in the memorandum is the opinion of the Bar Committee.

Mr. S. C. Mitra: I understand that you are for fixing the ages by law gradually. As regards marital cases, I understand there will be opposition. And you think there will not be opposition from the orthodox classes for a higher Age of Consent in extra-marital cases.

A. Yes.

Q. The age of majority or the age of discretion in India is 18, and you are proposing legislation for the whole of India. Do you not therefore think that the age should be such that the girls can understand the consequences? As regards marital cases we look only to the development of the girl. But so far as extra-marital cases are concerned, do you not think that even orthodox view will be in favour of a higher age?

A. There would be no objection. I simply said that 16 should be the age because I think that a girl at 16 would be able to give an intelligent consent. I have not got any other objection.

Q. In para. 7 you say that there is a religious notion that consummation should take place before puberty. Do you mean that it is ante-puberty consummation or ante-puberty marriage?

A. There are some cases that the injunction is about ante-puberty consummation also.

Q. Do you personally believe that there are such texts in scriptures?

A. No; it is only the conservative ideas which are the result of certain fears.

Q. It has been admitted that there are very few cases under the consent law in the marital cases. Can you suggest any procedure by which we can encourage more cases to come to court?

A. I should think the dread of the law is quite sufficient to check people from committing such crimes. It is very difficult to suggest a procedure by which to induce people to go to court.

Q. There has been passed in England recently a law to the effect that divorce cases should not be reported in full in newspapers. Do you think that some such procedure will help here also?

A. I have already suggested holding these cases in camera. If it is necessary in particular cases that can be resorted to. The provision is already there.

Q. There is a suggestion that instead of the girl being under the guardianship of the husband after she is married, she might continue to be under the guardianship of the parents till she attains puberty or that suggestion?

A. If the marriage age is not fixed, it would be much better that the girl is under the guardianship of the parents till she attains puberty or till the age which we may fix for consent within the marital state is reached.

Mr. Mudaliyar: May I know if this memorandum was considered by the Bar Association?

A. It was prepared by a Committee and submitted to the Association and finally passed.

Q. What is the membership of your association?

A. We have got about 150 members in the Association.

Q. Do you suggest that the age of 14 within the marital state is suggested as a compromise with the orthodox section?

A. Certainly and for the purposes of gradual legislation.

Q. Do you think there will be less opposition to 14 than to 15.

A. I think decidedly there will be less opposition to 14 than 15. If there is a sudden rise from 13 to 15 the opposition will be greater. If it is raised to 15 certainly there will be uproar in several classes.

Q. The existing practice is already 14 and fixing the Age of Consent at 14 would be simply putting on record the existing practice of the community.

A. Custom is not fixed. It varies in different places. It is necessary to prevent people who have consummation before 14.

Q. Then those who have consummation before 14 will have a grievance.

A. Yes.

Q. Another suggestion seriously put forward is that as the need for the advance is because of the evils and the evil is not going to be entirely stopped if the age is fixed at 14. Let us fix the maximum age once and for all and meet opposition. What is your opinion?

A. Legislation arises out of necessity. We find that 14 is sufficient to meet our present needs; and the necessity does not arise now to fix the age higher than 14.

Q. What is the necessity to make an advance in the law at all?

A. The reason is that the age of puberty is 14 and if it is fixed as the Age of Consent within marital state there would be no consummation before puberty. Otherwise consummation will take place before puberty and it will be detrimental.

Q. When does puberty generally take place?

A. Generally between 13 and 14.

Q. Supposing we have evidence to show that in 40 per cent. of the cases, puberty takes place at 14, would you then have 15 for the Age of Consent?

A. Yes, it may be fixed at 15, then.

Q. I take it that you want it to be fixed one year after puberty.

A. That would come to 14.

Mr. Kadri: We have been told that Ann ceremony is performed in this part of the country. Is it performed among all communities?

A. As far as I know there is no such ceremony performed here.

Mr. Kadri: You say in para. 8 that there is no Garbhandan ceremony; but we are told that you have got Anu?

A. Yes.

Q. Is it performed among all communities?

A. No, it is not performed. At a particular age the girl is sent to the husband's house.

Q. Is there any publicity attaching to this ceremony?

A. The relatives know that the girl has been sent to her husband's house.

Q. When does the ceremony generally come off?

A. In some castes it comes soon after the marriage and in some communities it comes about a year after.

Q. But never before puberty?

A. The girl is sometimes sent even before puberty. I know of at least one or two instances where it was done. In one case a Brahman girl was sent to the husband's house before she was 13 and so I take it that she did not attain puberty. But these are exceptional cases; generally the ceremony takes place after puberty.

Q. You say that if the birth register is properly maintained there will be no difficulty. I understand that under the Municipal Act the registration of birth is compulsory.

A. It is but the register is not properly maintained.

Q. Can you suggest anything to make it reliable and have it properly maintained both in the rural and in the urban areas?

A. I think this should be done under Government agency instead of being entrusted to local bodies.

Q. But we have got health officers now.

A. In a city like Ahmedabad births sometimes are not properly registered. In order to maintain a proper birth and death register it is for the authorities to see that it is properly done.

Q. So your experience is that municipal officers are not properly doing this work and cannot be depended upon?

A. The subordinate staff of the municipality cannot be depended upon so far as registration of births are concerned.

Q. What department of Government would you entrust this duty?

A. I think the vaccination department.

Q. You mean the Department of Public Health?

A. Yes. Government can get some more officers; they can administer one more subject.

Q. At present the name of the child is not mentioned so it is difficult to say whether it is the same child.

A. I suggest that the age of the mother should also be entered when the birth of the child is reported.

Q. On whom should lie the duty of reporting the birth.

A. On the parents or guardians and its breach should be penalised.

Q. Any suggestions about marriage registers?

A. I think it would be much better if they are maintained, but it would rather be a complicated method. There are minor communities which you have to take into consideration. A large section of these are uneducated

and move about in certain districts; it will be difficult in their case to maintain marriage register.

Mr. Kanhaiya Lal: You are in favour of making the marital offences non-cognizable. Would you give the right of complaint to the girl and her parents and also to other responsible bodies or individuals?

A. Yes.

Q. Would you like to constitute vigilance societies for the purpose of watching and looking after these cases and bringing to light?

A. There is no objection.

Q. Should they be of a voluntary character?

A. Certainly.

Q. Would you give the same power to social reform organisations which may exist in the country?

A. I would not mind it.

Q. Would you recommend that in all these cases a preliminary enquiry under Section 202, Criminal Procedure Code, should be instituted by the trying magistrate before the prosecution is actually started?

A. I think it would be better if there is a preliminary enquiry before the trial actually takes place.

Q. Would you further recommend that in cases of this character after the preliminary enquiry the magistrate, if it is a case fit for trial, may actually hand it over to a matrimonial court consisting of a magistrate and two non-officials, so that the trial may be expedited and probably more confidence may be inspired in the minds of the parties?

A. I think it will complicate the matter.

Q. How?

A. Just after the preliminary enquiry we will have to select two non-official people every time.

Q. We may nominate them permanently for 3 years or 5 years.

A. You do not know when an offence is committed. Why it should not be tried by a magistrate?

Q. The idea of the people is that these are domestic affairs and the less there is of interference by criminal courts the better. In view of this would you recommend that these cases should be tried by matrimonial court because it would inspire more confidence and be more satisfactory?

A. I would submit that the trial should be left to the magistrate who makes the enquiry and it is not necessary to complicate matters.

Q. If the trial comes before the Sessions then there will be 2 enquiries. One, the preliminary enquiry then there will be a trial after the case has been summoned and then again there will be a trial before the Sessions. The girl may have to appear several times over, the witnesses will have to be dragged from court to court, so that it may lead to considerable harassment?

A. People would like a trial by sessions court than to have a trial by a matrimonial court.

Q. Would you make the offence in marital cases compoundable?

A. No, I would not.

Q. Even when the girl is 16 years or 17 years old?

A. I would not do it without the consent of the court.

Q. As regards the registration of marriages you have said that there will be certain difficulties. You of course recognise that the number of marriages celebrated is much less than the number of births and deaths that are reported in the country?

A. Certainly.

Q. And if the registration of births and deaths can be carried on by local boards or municipalities, would it not be desirable that we should have marriage registration, so that we should have some tangible material, which may be helpful in time of need?

A. In the birth register if the age of the mother is given will that not give sufficient indication?

Q. Birth registers may be destroyed after a certain period and it will be such a huge record that tracing the girl will be more or less difficult. The marriage register will be smaller and it will be a local record and it will help discovery of the real facts in a simpler and easier form.

A. Of course if it is simpler then I have no objection, but I think it will be more complicated. The complication is that there are several lower class communities. Some of them are performing 50 marriages a day and there will be several such communities consisting of a large population. It will thus be a complicated matter and will require a large staff and will involve a great difficulty.

Q. Would the same staff which are now registering births and deaths not be able to maintain registers?

A. I think it will not be possible.

Q. If the staff is provided then it is a matter which ought to be considered and accepted?

A. Will it not cause hardship to the people to have marriage registers?

Q. Will it be greater hardship than the reporting of births and deaths? Would you make it penal?

A. Yes.

Q. In the sense of imposing fine in case of breach?

A. Then it will be a hardship.

Written Statement, dated the 29th August 1928, of Mrs. ARUNA DEVI MUKERJEE, Mehsana, Baroda State.

1. So far as I have been able to imagine there is a great deal of dissatisfaction, particularly amongst thinking classes with the present Law of the Age of Consent, particularly in respect of the laxity with which it is worked. The provisions as against the husband, are in my view, almost a dead letter. Apart from raising the age, there can be no question that the law requires to be tightened.

2. In my view there is no point in retaining any distinction between the Age of Consent as against a husband, and that as against a stranger. The distinction is futile. What is wrong for the stranger, is doubly wrong for the husband, particularly as the law charges him with the sacred responsibility of protecting the person of his wife. There can be, therefore, no manner of doubt that in the interests of the woman, the Age of Consent in both cases should be raised to 16 years of age. For it is only at that age and not earlier that a girl can be considered to have effectively given consent about giving herself to another. A lower age to a husband would mean giving license to precocious mating which it is most necessary through legislation to prevent. There is no hardship in raising the Age of Consent as against the husband, as it does not involve raising the age of marriage; public opinion, especially parents of girls will favour this. Almost all educated women that I know of are unanimously in favour of the change, and it is their opinion that should count most with the Legislature. Then again there is a healthy tendency amongst what are known as intermediate castes—the bulk of agriculturists and artisans, amongst whom although they marry their girls, even in

infancy, they never send them to their husbands for effective marriage until 16 or 17. This tendency will be stimulated and re-inforced, if the Legislature raised the Age to 16. It is in that view, more than anything else, that I strongly advocate that the Age for husbands and strangers should be the same, *viz.*, 16. I should, therefore, propose the deletion of the "Exception" clause to Section 375 of the Code, and amend Section 376 (A) accordingly. I know it will be said that the law will remain upto the law Courts. But it will help to stimulate public opinion, of which after all law is only a hand maiden. In advanced Western countries, law is indeed more conservative than public opinion; but in a country like India, the Legislature has a special responsibility in respect of forming and leading public opinion.

6. I do not think cohabitation before puberty is very frequent in the country. But that the consummation of marriage generally takes place soon after puberty when the girl is about 12 or 13 cannot be unfortunately denied. The Baroda Fertility inquiry of 1921, of which I shall make more detailed mention later, found that out of over 28,000 cases of completed marriage whose particulars were studied, nearly 22,500 or 80 per cent. were cases of women whose first children were born when they were 12 or 13 years of age. As the enquiry was mostly conducted in towns, rural communities were not taken much into account. The marriage age is steadily though slowly rising, but it has not risen beyond the puberty age. In more primitive communities, the tendency is, as I have pointed out above, to postpone cohabitation till after 16. But I am sorry to say that in advanced and even highly educated castes, like Brahmans and Vaidyas in Bengal (where parental influence, through the impact of modern forces, such as the reading of hot-house novels, the seeing of Cinemas and plays and the freer intercourse of boys and girls is more ineffective than in less educated castes), early marriage, say at about 13, is often followed by early consummation. I hope it is only a short period effect, for I believe that a truer conception of the freedom of the sexes and a more general system of co-education will remedy this largely, and I feel also that Legislation by raising the age against husbands will tend to control this mischievous tendency and to restore to some extent parental control.

9 and 12. I should like these questions together. I do think most certainly that the attainment of puberty is not enough indication of physical maturity for the purposes of effective marriage. Amongst labouring and agricultural classes, their life of toil, their open air existence, their simpler diet—all tend to a higher age of puberty, which is about 16, the proposed Age of Consent. Amongst higher classes, however, with their enfeebling diet and their more cloistered lives, the age of puberty is low. I have known cases of girls in good families who have matured at 11 or even earlier, but to enforce motherhood on them is a curse, from which it is the bounden duty of an enlightened State to protect them.

My own view that the puberty age is a totally inadequate index for effective marriage is supported by the facts regarding fertility which the last Census discovered. The Baroda Stato conducted a searching and comprehensive enquiry into the size of families and fertility of marriage. Altogether 131,235 families were investigated, of which 28,061 were those of completed fertility. It was found that the fertility curve was markedly different to that of Scotland, where sex conditions are healthier and cohabitation does not generally begin till after 17. In the Scottish Census the frequency in regard to sizes higher than six, is greater in Scotland than in Baroda. Again in Baroda and presumably in India generally, the effect of early marriage and premature motherhood is seen in a continuous and at later periods of marriage life, a serious decay in fertility. On the other hand, the Scottish experience with its higher age of marriage results in a much higher ratio of survival and even a revival of fertility in later years, especially before the menopause.

The Baroda figures also point other more valuable conclusions. It shows in the first place that if the cohabitation age is raised from say, 13 to 16 or even 20, the ratio of fertility rises from 5.24 to 5.54 children per marriage, and the ratio of survival from 589 (per 1,000 children born) to 609. In other words, the size of the survived family rises from 3.08 to 3.30, and there are thus 220 additional children per 1,000 marriages saved for the race by this means. I adduce these statistical data for the use of the Committee, so that they may prove very valuable. I happened to assist in the Baroda Census and I know that these data were very carefully sifted and analysed.

From the above, it is obvious that early consummation of marriage has been fatal to the race by having a serious effect on the fertility of married mothers, and on the proportion of children that survive. The lasting effect on the health of young womanhood of this pernicious evil is too patent to need any statistical support.

16. The question of margin of error in respect of the Age is of some administrative interest. Generally our people are fond of stating their ages in round numbers which are multiples of 5 or 10. Any odd figure like 13 or 14 may not therefore be effective. There is however a secondary fondness for the figure of 12 or 16. Census workers are familiar with this phenomenon. I therefore support 16 for this reason, as for other more important physiological reasons. Besides, the errors of age occur more particularly in the higher ages, when people lose count of their years. For ages like 16, I do not therefore anticipate much difficulty.

20. I consider that penal legislation fixing the Age of Consent at a certain figure will be less likely to work as a hardship on people in their present stage of evolution than enacting a law fixing the age of marriage at that figure. Such penal legislation is useful mostly for its healthful effect on public opinion, even though it may not for the present be effectively worked, while a marriage law fixing the minimum age for marriage at 16 will operate needlessly harshly on people who are not prepared to go up to this limit. An Age of Consent Law will certainly not run counter to public opinion to the same extent as a marriage age law. But I should not be understood thereby to mean that I am opposed to any marriage age law. There should be one with a low marriage age, say 12 for girls, providing for severe punishment (including imprisonment) for offences against it. I know that there is a Marriage Age Law in Baroda State and it works with moderate success.

I feel highly honoured that the Committee should have asked me for my views. While I am conscious of my own unworthiness to contribute materially towards the discussion of this most vital problem, I hope and trust that the Committee should be guided generally by the opinion of educated women whose voice should prevail.

Oral Evidence of Mrs. ARUNA DEVI MUKERJEE, Mehsana, Baroda State.

(Ahmedabad, 18th October 1928.)

Chairman: What was your connection with the Baroda Census?

A. Very little. I just helped my husband in preparing the tables. I have some practical experience of the three districts in the State where I have been travelling with my husband extensively. The report (Baroda Census Report of 1921) can be had from the Naib Dewan, Baroda.

Q. I take it the result of your written evidence is that you prefer the age of consent to be raised to 16 and you would rather have a law of marriage beginning with 12 for girls.

A. Yes.

Q. In your answer to question No. 2 you seem to admit that it will only have the effect of stimulating public opinion.

A. Yes.

Q. You say the law will remain a dead letter but it will stimulate public opinion. Is that the result that you expect from this by raising the age of consent?

A. Yes.

Q. What do you conceive to be the object of a law of marriage or the law of consent? Is it to postpone maternity?

A. Exactly.

Q. Do you think by raising the age maternity will be postponed?

A. Yes. I have been examining about 1,700 babies in two towns, Mehsana and Sidhpur. Hardly 100 babies came upto the standard. The effective marriage was done, I was told, usually just after puberty. I think that is why the average standard of the baby was so low.

Q. What was the usual age of the girls?

A. 13 or 14. I saw what the result was. They are becoming mothers early.

Q. How would you prevent early maternity which is the objective that you want to achieve?

A. That is why I want to raise the age of consent to 16. In Baroda in the district in which I have been travelling extensively with my husband I found that the agriculturists and the artisan class, the intermediate classes, marry very early, but they do not send their girls immediately to the house of the husband.

Q. Will the raising of the age achieve the object which is to put off maternity?

A. Yes, I think so.

Q. Has the law in Baroda State prevented early motherhood?

A. It has neither increased early motherhood nor it has decreased it. The number is stationary.

Q. In answer to question No. 20 you say that the law fixing the age of marriage will work greater hardship. Which of these you consider to be a greater hardship, to tell a man that you cannot be married before 14 or that after marriage you cannot approach your wife till such and such age?

A. So far as the orthodox people go I think the age of consent will be acceptable to them. It can be exercised more easily than the Marriage Act. The orthodox will accept it with better grace.

Q. But will it achieve the object?

A. I believe so.

Q. Do you think those cases will come to light?

A. They will go to court if the parents think that their daughters are ill-treated. But they don't come to court and that is why I want early marriage law.

Q. Do you think it will be accepted?

A. If we begin with 12. But there must be severe punishment provided for. In Baroda we have a fine, but that fine has not prevented the crime. They pay the fine and get off. I want rigorous imprisonment.

Q. Why do you put the age at 12?

A. Simply to prevent hardship to the people.

Q. Left to yourself what age would you suggest?

A. I am a Brahmo. I do not believe in girls marrying early. I would put it at 18.

Dr. Beadon: Can you tell us of any case that might have come to your notice of a girl having received injury due to early consummation?

A. I have seen many young mothers' babies. Out of the 1,700 only about 100 came upto the standard. They were all under weight and physically weak.

Q. What ages were those babies?

A. From about 2 to 3 months to about a year. Their weight was much below the normal. It varied from 3 to 4 lbs.

Q. Were they babies of poor people?

A. Not poor only. They were of all classes.

Q. Could you give us details of one or two cases?

A. I could not give you details. When I was in charge of the health week I examined those babies personally.

Q. Are any records kept in the State?

A. Yes.

Q. Do you think you will able to get a copy?

A. I think I can.

Mrs. Nehru: If you fix the age of marriage at 12 and the age of consent at 16 there are four long years in between. How do you propose to make the law effective during these years?

A. I have answered this from the State experience. If you ask the average class their age, they will tell you in round numbers, 12 or 16. They never say odd numbers. 12 is a very famillier number and 12 is a very definite number in the girl's age. I find that these intermediate classes that marry early do not send their girls to their husbands' house before they are of 18 or 19. Motherhood is postponed in their case automatically.

Q. Do you think consummation takes place at all before 13 at present?

A. Not much in Baroda. Among the higher classes it does take place.

Q. How long have you been in Baroda?

A. 8 years.

Q. Do you know anything about Bengal?

A. My experience is confined to Baroda. I know of Bengal very little. I have been only in Calcutta.

Q. In which communities does consummation take place before 13?

A. It is especially among the lower classes. The agriculturists and the artisan class are very much enlightened in that way. It is only Brahmins among whom early consummation takes place. It is not much before 13.

Q. And in Bengal?

A. I think public opinion has changed. I have seen orthodox girls being married not before 18 or 19. As a class the Bengal Hindus have much improved now.

Q. In answer to question No. 1 you say the law requires tightening up. In what way would you like it to be tightened?

A. By punishment. Give severe punishments and the law will be enforced.

Q. Then according to your scheme there will be many cases of prosecutions during the intervening years.

A. There should be a provision that she should remain separate for that time.

Q. Generally speaking in Bengal girls are married at 14 or 15.

A. Yes.

Q. If you raise the age upto 14 there will be no hardship.

A. I don't know much about Bengal.

Moudri Muhammad Yakub: You speak about tightening the law. May I understand that you want to make the offence cognizable?

A. Yes.

Q. But don't you think that if a husband is punished there would be an estrangement of feeling between the husband and the wife and it will be a great hardship especially when there is no widow-re-marriage or divorce?

A. But if one or two husbands are punished we won't have many husbands doing that. I want the greatest good of the greatest number.

Q. Why do you fix the age at 12? Is there any sanctity attached to that age? I think that is not on medical or religious grounds.

A. I think the people are enamoured of that figure. If you go about in the villages and ask a small girl her age she will say about 12. They are very fond of 12 and 16.

Q. Would you like to have law that at the time of marriage bonds be taken both from the parents of the girl and parents of the husband that they would not allow them to live together before they have attained a certain age?

A. Yes.

Q. Certain Bengali gentlemen have told us that according to religion, girls ought to be married before they attain the age of puberty. Is that the correct view of religion?

A. That used to be the orthodox view. I know of orthodox families where girls have passed university examinations. They do not follow that injunction.

Q. Following is different from tenets. Is there anything in religion?

A. I think that is the usual religious view in Bengal amongst the higher classes.

Q. Can you quote any authority?

A. I belong to the Adya Brahmo Samaj. I don't believe in these injunctions.

Mr. Mitra: As regards marital cases you look to the physical development only. But as regards extra-marital cases you have also to see that the intellect is fully developed and in fact according to the law the age of majority is 18. Having that in view would you make any difference between marital and extra cases?

A. I would not make any difference upto 18.

Q. You know very few cases within the marital state are reported. In fact, on the average there are only 6 cases reported. These are cases of a private nature. There has been enacted a law in England that the divorce cases should not be published. Do you think some such procedure should be adopted by which these cases may not be published and that these cases may be tried in camera?

A. I would prefer that, but I don't know how far it would be useful in serving the object.

Q. According to the Hindu law as soon as a girl is married the husband can exercise his marital rights. Do you think there must be some enactment by which the guardianship should remain with the parents of the girl till she attains a certain age?

A. I think so.

Q. You have experience about Baroda State. Do you think that conditions in the British territory round about Baroda are more or less the same?

A. I don't know much about British territory.

Q. Have you got any experience with regard to Bengal?

A. It is confined to Calcutta only.

Q. You cannot say what is the marriageable age in villages?

A. No.

Q. Do you mean to say that in Scotland women at a higher age still procreate?

A. Yes; Because in Scotland sex conditions are healthier and consummation does not take place before 17. The fertility curve for Scotland is a sort of U curve, that is the fertility is highest at the beginning, then there is a decline, and just before the menopause it is highest again. But in India it is a sort of n curve, that is the fertility is lowest at the beginning, then it goes up and it is again lowest just before the menopause. Also in Scotland the frequency in regard to the sizes of the family higher than 6 is greater.

Q. You say that "the Scottish experience with its higher age of marriage results in a much higher ratio of survival and even a revival of fertility in later years, especially before the menopause". What do you mean by survival?

A. I mean survival of children.

Q. Have you compared the fertility of women in Scotland and in Baroda?

A. The conclusions are contained in page 212 of the report. Taking the minimum age of marriage to be 17 a Scottish Doctor, Dr. Dunlop, found that in Baroda the fertility of women was highest at 25, and then it suddenly dropped until it is very low just before the menopause.

Q. What is the average age of women in this country as compared with women in Scotland?

A. I do not know.

Q. Have you considered the various causes of feminine mortality in Baroda and in Scotland?

A. There is a whole chapter devoted to it in the Report.

Q. Here is a pamphlet by Mr. Charu Chandra Mitra saying that the percentage of feminine mortality in Bengal is considerably lower than that in Scotland and Ireland. Do you think it is so?

A. I do not think so. I think that side of the question has been fully discussed in this report.

Q. Do you think that the age of 16 should be fixed for consummation because it will stimulate public opinion? Do you think that it will not prevent consummation whatever we may do?

A. That is my point. With us the law always goes ahead of public opinion. In Europe public opinion is established first and then you get the law.

Q. But there are others who say a law going ahead of public opinion is no use and they say that the law regarding widow-remarriage has not been taken advantage of. They say that legislation which goes ahead of public opinion is nugatory.

A. I should think the number of widow-marriages is increasing, though the higher castes are hopeless.

Q. Do you not like to make a difference between marital and extra-marital offences? Do you think that it will be an object lesson to offenders?

A. Yes.

Mr. Kanhaiya Lal: During the census was any attention directed to the weight of babies under a certain age?

A. I do not know that. It is done by the Medical Department and I have no knowledge.

Oral Evidence of Mr. BHOGILAL CHOTALAL SUTARIA, Cloth Market, Ahmedabad.

(Ahmedabad, 16th October 1928.)

Chairman: You belong to the Jain community?

A. Yes.

Q. Are you a resident of Ahmedabad?

A. Yes.

Q. What is the marriageable age among the Jain community?

A. 15.

Q. When do girls attain puberty?

A. From 12 to 15.

Q. So that the marriage is generally after puberty?

A. Yes in most cases.

Q. After marriage are they sent to the husband's house?

A. They are sent to the husband's house immediately.

Q. How long has this been the practice?

A. It has always been the practice.

Q. When do generally girls become mothers in the Jain community?

A. At 16 or 17.

Q. Have you compared your girls when they become mothers with Hindus in whom marriages take place at 13 or 14? Are your girls much better in health?

A. Still they are not better. They are not strong enough to become mothers.

Q. You think that that age is not quite fit enough for safe motherhood?

A. No.

Q. What age would you like to have?

A. 16 for marriage so that girls may become mothers after 17 and for boys it should not be below 20.

Q. What do you think of the age of consent for married girls?

A. The age of marriage should be the age of consent. In extra-marital cases it should be fixed at 20.

Q. Is this the age when intelligent consent can be given?

A. Yes.

Q. Your girls are married at 15. Do you find any case in your community in which there is a danger of the girl going wrong below that age?

A. No.

Mrs. Beadon: Can you tell us about any cases which may have occurred within your personal knowledge of girls of 13 or 14 where there may have been an injury to the girl?

A. Yes.

Q. Would you give us details of one or two cases which have come within your personal knowledge? Will you give us any instance?

A. No, I cannot.

Q. In answer to Q. 12 you say that maternal mortality and infant mortality is due to early consummation? Can you give any instances?

A. I cannot give you any instances.

Mrs. Brjlal Nehru: Do many girls in your community go to schools and colleges?

A. Yes, but some go to colleges.

Q. What is generally the age of consummation in your community?

A. Nearly 15.

Q. Is the law of the age of consent known among the people of your community?

A. Not generally.

Q. Do people generally want the raising of the age of marriage?

A. They want the age to be fixed by law. In cities they will approve but I cannot say about villages.

Q. Supposing the age of marriage cannot be fixed by law will the age of consent be approved of by people?

A. Age of consent would not be of any use.

Q. Why not?

A. When the age of marriage is not fixed if a girl is married at 13 she is at the mercy of her husband.

Q. Supposing she is separated from her husband by taking bonds from the parents of the boy and the girl?

A. It would not be possible. Once she is married they are not in the hands of the parents but in the hands of the husbands.

Q. Would you prescribe to penalize the guardian of the girl?

A. The guardians shall have to suffer for the fault of the husband.

Q. In your community is the ceremony of goana or garbhadan performed?

A. No. It is practised in other communities such as gowalas who marry their girls at an interval of 12 years. They do not send children to the husbands' house and so they observe this ceremony.

Q. If the girl is married before puberty can she be kept away from the husband till the prescribed age of consent?

A. The age of consent will not help these things. Girls are married at 3, 4, or 5 years in the backward communities and if the husband desires to take the girl to his own house he can, otherwise they will break the marriage.

Q. If the law of guardianship is changed will that help?

A. It will not have any effect. Once a girl is married she is not the property of the parents but she is the property of the husband.

Q. Are these the ideas of the people?

A. Unless these ideas of the people change that would not help us.

Mr. Bhargava: Is there any dissatisfaction in your community about the marriage age?

A. None.

Q. So you have proposed 15 as the marriageable age?

A. 15 or 16 but I would prefer 16.

Q. In backward communities marriages take place at 3, 4 or 5. Don't you think it is a very big leap?

A. If a law is passed they will come to senses.

Q. Have you got relations in the Jains in the Pnnjab?

A. No.

Q. What sect of Jains you belong to?

A. Dasha Shrimali. There are Swatambers also. In Ahmedahad there are sub-sections of the Jains.

Q. Are you confined to cities or villages?

A. Cities.

Mr. Mitra: Would you prefer 16 as the age of marriage?

A. Yes.

Mr. Kadri: So far as your community is concerned will there be no resentment?

A. No.

Mr. Kanhaiya Lal: The complaint is that these marital cases are not brought to light. Can you suggest any measures to help the authorities in bringing these cases to light?

A. I cannot suggest anything.

Q. Would you be in favour of constituting vigilance societies to educate the people to prevent them from consummating marriages earlier and also to bring these cases to light?

A. It will have effect slowly.

Q. Will such societies be useful?

A. Yes.

Q. Would you constitute them as communal type or representative type?

A. All together—cosmopolitan. These should be both in towns and villages.

Q. Would you also give the power to social reform organisations to look after these cases and bring them to light?

A. If the organisation be a strong one I will give the powers to it.

Q. Do you think that caste panchayats will be able to help us in this matter?

A. I do not think so.

Q. Have you got Jain Panchayat?

A. Yes.

Q. If you give that power to Jain Panchayat will they help us in preventing these cases and also in bringing them to light?

A. No; they would not like to do it.

Q. But there must be other men like you who will take up this work in the public spirited manner?

A. No, they would not.

Q. Would you make a marital offence cognisable or non-cognisable?

A. Non-cognisable.

Q. Not even with the sanction of the district magistrate or some higher authority?

A. No.

Q. Would you require that an enquiry should be made by a police officer of a high standing?

A. Not lower than a Deputy Superintendent.

Q. Should there be preliminary enquiry by a magistrate before notice is taken?

A. Yes.

Q. In case the preliminary enquiry leads to *prima facie* case, should the case go to an ordinary court or should it go to a special matrimonial court constituted by a magistrate and 2 non-officials?

A. Non-official court would be better.

Q. Do you think this court will inspire more confidence?

A. Yes. These cases should be conducted in camera.

Q. Would you make marital offences compoundable in order to introduce the possibility of good feelings between the husband and the wife?

A. Yes.

Q. Would you make it compoundable with the sanction of the court?

A. Yes.

Q. Would you recommend the system of registration of marriages?

A. It will be very difficult to preserve these records.

Q. Are not marriages much fewer than the number of births and deaths?

A. Yes.

Q. Are the difficulties in the case of records of these marriages being preserved greater than those in maintaining registers of births and deaths?

A. Registers of births and deaths are never regular.

Q. But the difficulties would not be greater than the difficulties now attaching to the registration of births and deaths?

A. The difficulties would not be more but who are to report the marriages?

Q. It has been suggested that report should be made by the parent or guardian of the marrying parties or by the priest or by both?

A. I think in the beginning it will be hard for the people.

Q. In the beginning everything appears a hardship and as people get accustomed they will report marriages. Is it not?

A. Who will preserve these records?

Q. Suppose we ask the authorities who are maintaining the births and deaths namely the municipalities, district boards or the taulak boards to maintain these registers of marriages, would it work?

A. Yes, if they have good staff and supervision.

Q. And it will be helpful in finding out whether the law is being infringed or whether it is being preserved?

A. Yes.

Oral Evidence of Mr. AMBALAL SARABHAI, Ahmedabad.

(Ahmedabad, 18th October 1928.)

Chairman: What is the marriageable age among the Jain community?

A. In Ahmedabad it is between 14 and 16 for girls. The age of puberty is between 12 and 14.

Q. That means most of the marriages are after puberty?

A. I should think so.

Q. Have you any knowledge of other communities here—of the Hindus, Brahm Khshatrias, Nagars?

A. I think I may say that among Nagars and Brahm Khshatrias marriages do now take place at an advanced age. They are occurring for a decade.

Q. What is the age of marriage of Nagars and Brahm Khshatrias in other parts?

A. I think 14-16.

Q. We are told that amongst the Brahm Khshatrias it is much higher. Is that so?

A. The majority of cases marry young but I have no personal knowledge.

Q. Are there any communities in Ahmedabad where girls are married at 13 or 14 and consummation takes place soon after marriage?

A. Among the Vaishnavas they marry early.

Q. What do you think of the present age of consent law? Do you think the law is known about here among the people?

A. I do not think it has any meaning so far as married people are concerned. It has not been effective. Amongst those who are not married if there are any cases it helps.

Q. Have you any reason to believe that there are a large number of cases of consummation before 13?

A. Among certain communities I know it would happen if the husband is grown up and the wife has no people of her own.

Q. Are there any communities amongst whom you would say it generally takes place?

A. It generally takes place if the parents of the wife are poor and the parents of the husband are rich. It depends on the social consideration.

Q. What is the condition of the girl mothers among the communities among whom marriage takes place between 14 to 16? What is the condition of girl mothers and babies? Do they suffer even by marriage at that age?

A. Yes, they do.

Q. And there babies?

A. They are bound to suffer.

Q. Would you put early consummation as one of the chief causes of infant and maternal mortality?

A. Yes.

Q. Would you have a law penalising marriages and fixing the age of marriage or would you prefer the law of age of consent?

A. I think the only effective thing would be to have marriage legislation.

Q. Something like Sarda's Bill?

A. I would go further as regards the age limit. I would suggest 16 as minimum for girls and 18 as minimum for boys.

Q. Do you think there will be no opposition if we make the marriageable age 16 or 18?

A. There is a class of people who will oppose any measure but I would not take any notice of it.

Q. Don't you think there is a very large percentage of people who would be affected by the age of 16 or whose customs will be interfered with?

A. Customs are so bad that it is high time we did something.

Q. Do you think there is any likelihood of dissatisfaction if we raise it to that age?

A. May be temporary.

Q. Do you think there will be less dissatisfaction if we raise it to 14.

A. When I say 16 I have this in mind that at that age a girl if she does not like the husband will be strong enough to oppose the wishes of the parents while she would automatically go above 16 but at 14 she is not strong enough to oppose. But the age of 14 may be looked at in another way that it is going to interfere in pre-puberty marriages. Every time you raise the age there will be some sort of agitation in the country and instead of having it twice I would rather have it once.

Mrs. Beadon: Would you give us any details of cases that have come to your personal knowledge in which early consummation has caused injury to the girl or to her children?

A. I am not a doctor nor have I brought statistics. I may add that 80 per cent. of cases occur where there is a second wife.

Mrs. Nehru: Can you suggest any means of making this law of the age of consent effective?

A. I think it should be made cognisable?

Q. Do you think police in our country is reliable for such work?

A. I suggest that there should be separate police force of women to deal with the question of morality of women.

Q. Shall we be able to get sufficient number of women in this province? And do you think in other provinces also they can be had?

A. I have no knowledge of other provinces but at Ahmedabad we were going to abolish higher teachers class in the training college for want of any opening. I think those teachers would do very well.

Q. What other measures would you suggest?

A. Birth certificates. When a child is born the parent has got to go and report. At that time the birth certificate of the mother must be produced. That would show the age of the mother.

Q. Would you penalise its breach? Supposing it is not possible to produce the birth certificate of the mother at the time of reporting the birth of the child?

A. In Ahmedabad it is possible for everybody to get a birth certificate by applying to the municipality. If records are not kept in the villages I think it will be difficult but at least in cities there would not be any difficulty.

Q. Even in the cities birth certificates are not reliable?

A. I think they are reliable, they are used for all sort of purposes, for proving the age in courts.

Q. Supposing the girl is able to get her birth certificate, how do you propose to utilise it?

A. For the purpose of age of consent. It will show at what age she got the child and that will prove whether there was early consummation.

Q. What punishment would you suggest?

A. If the husband is 16 I would punish the parents of the husband. Girls at least have no choice in the matter and if the boy is above 16 I would punish the boy.

Q. Don't you think for punishing the boy the age of 16 is much too low?

A. I take it that if he is old enough to be a father he is old enough to go to jail.

Q. Even then don't you think to a certain extent he is the victim of his circumstances and when he is 16 years old, parents are to blame more than he himself?

A. I have not given much thought to it.

Q. Do you think it would be better to raise the age from 16 to 21?

A. I would then raise it to 18.

Q. What punishment would you have?

A. Imprisonment up to a maximum of 6 months or fine.

Q. Would you punish the guardians or parents?

A. Yes. I will leave the discretion to the magistrate to find out the relative responsibility of each. I will fix it according to the responsibility of each—parent or guardian.

Mr. Bhargava: You have said that you are not speaking of the Jains. Are you speaking for the educated communities of Ahmedabad?

A. I am speaking for myself.

Q. May I take it that you are in favour of strengthening the municipal law and you mean arming the municipality with powers to enforce this consent law?

A. No.

Q. You want the general law of the land to be changed?

A. I want a separate police force of women for India to look after the morality of women as it is in England. In London they have a separate force for women for the purpose. Supposing a man advertises for a girl secretary or typist. If the police suspect that the advertisement is for immoral purpose the women police make it their business to find out. They generally deal with the morality of women and nothing more.

Q. As regards birth certificates, you have no knowledge of rural areas of the rest of India?

A. No.

Q. I do not think you are in favour of extending it outside Ahmedabad?

A. I think it should be enforced and it should be an obligation on the mother to produce a certificate. For the first few years it may be difficult but you can enforce the proper registration of births.

Q. What benefit would it be to produce another entry from the existing register?

A. When a child is born he is to be registered. At that time if the birth certificate of the mother of the child is produced it will show at what age she gave birth to the child.

Q. Do you realise the consequences that it would be most difficult to get copies beforehand?

A. I do not know much about rural areas but it can be enforced in Ahmedabad and other cities.

Moulvi Muhammad Yakub: Do you know that the name of the child is not given in the register of births?

A. The registration system will have to be improved. There ought to be a column for the name.

Q. You know births are registered only 72 hours after the birth and the names are not given even for months. What would you suggest for that?

A. I have not studied legislation in this connection and we can find out what is being done in other countries. These birth registers are used as evidence in courts. These birth certificates are used for ascertaining ages. It can certainly be good enough for this purpose. I don't say that the present system *in toto* will suit. You may have to make some changes.

Q. But it will be very long before this may come into operation.

A. It all depends with what earnestness Government starts doing it.

Q. Do you propose that there ought to be a supplementary entry after the name has been given?

A. Even if the name is not given, somebody will have to say that this certificate is of such and such child. It will have to be supplemented by oral evidence.

Q. I don't think it will be very convenient for anybody to go and give evidence to that effect.

A. It will have to be supplemented by oral evidence.

Mr. Mitra: Will it not be sufficient if a column is left blank in the register to be filled in after 6 months or whenever the name is given.

A. These are small details. It can be done.

Q. I understand there is a notion among the orthodox people about early marriage. Will you kindly tell us whether it is about consummation or early marriage?

A. My own opinion is that in all such cases religion becomes a convenient excuse for a sin.

Q. Do you know anything whether it is about ante-puberty marriage?

A. Some people believe that marriage must take place before puberty.

Q. So if we have a law fixing the age of marriage either at 14 or at 16 the opposition will be the same, because they care for ante-puberty marriage. Is it so?

A. It will be the same to these people.

Q. Therefore it would be better to fix it at 16.

A. Yes.

Mr. Mudaliyar: You said the marital offences should be made cognizable. Is that dependent upon having a women police force?

A. Yes.

Q. Supposing we are not in a position to have a women police force.

A. Even then I would prefer it to be cognizable.

Q. Will it not be a hardship?

A. Our police being not what one likes it to be there may be some hardship but the resulting harm would be less than otherwise.

Q. Would you prefer that the investigation be left to a superior police officer like the Inspector?

A. Personally I think it should be a separate Department but you want me to assume it is not a separate department.

Q. But the question of women police is such a large question, it may not be possible to bring it into practice in all parts of the country.

A. If you cannot get a force of women police I should have a separate force of the C. I. D. for the purpose of these social matters and it should have nothing to do with criminal cases.

Q. Would you have the previous sanction of the District Magistrate before the case is tried?

A. I see no objection to it.

Q. You have said that 6 months should be the maximum term of imprisonment in the case of a husband above 18 for the infringement of this law. Is that irrespective of the age of the girl? At present under 12 it is 10 years.

A. Under 12 I should have the same punishment, between 12 and 14, 2 years as at present and after 14 I will have 6 months. I would have a graduated punishment.

Q. You said that the parents of the husband should be made punishable. But cohabitation may take place without their cognizance.

A. I think it cannot take place without their connivance.

Q. I think it should be presumed, unless the contrary is proved, the burden of proving being on the parents, that it has taken place without their connivance.

A. No. Whether they prove it or not they should be held responsible. I want to lay an absolute responsibility on them. I say it is very convenient to know it.

Q. Why do you exclude the parents of the girl?

A. It is for the parents of the husband to regulate the life of the young wife. She is with them. It is they who regulate her life.

Q. It is possible the parents may be away from the place and the offence may take place in the absence of parents.

A. It should be the business of the husband to send the girl to her father's house then.

Q. Supposing the girl is an orphan.

A. There would be exceptions which it would be difficult to meet in this way.

Q. Therefore I say, till the contrary is established the parents should be liable and the burden of proof must be on the parents.

A. I don't approve of it.

Q. I don't think lot of people would get off.

A. I am afraid it will be abused.

Q. You know the principle of law, out of a hundred guilty one person can escape.

A. And it has played havoc here.

Q. As regards fixing the age of marriage at 16 one of the reasons I understand was that the option of refusal will have to be with the girl

though she has attained 16. It is not entirely from the physical point of view that you are suggesting that age.

A. Apart from physiological considerations psychological considerations are still more important.

Q. Are you influenced by the fact that in Ahmedabad a large number of marriages take place of disproportionate ages in arriving at this conclusion?

A. That is one consideration.

Q. But among the Hindus all these centuries neither the boy nor the girl has had any hand in the selection of the mate. All is left to the parents.

A. And see what a nation we have got.

Q. But the orthodox opinion will be dead against.

A. That is why we have got foreign rule here.

Mr. Kadri: You want to make the offence cognizable subject to certain conditions.

A. Yes.

Q. Do you think there would be sufficient work for the special branch of the C. I. D. There will be very few cases and these agencies will have no work.

A. I don't know the law regarding the houses of ill-fame. These people would certainly go into those houses and do social propaganda work. We can find out what is going on in other countries. But that would form an important work of this department.

Q. Would you like this department to be separate altogether or would you have it as a part of the regular police force?

A. It may be under the Inspector General. But it will have nothing to do with criminal cases.

Q. Don't you think if we have vigilant societies or social reform organizations that would inspire greater confidence?

A. They may take the co-operation of those bodies. But it must be a regular Government Department for which Government should pay.

Q. But do you know our police does not command the confidence of the people.

A. It all depends upon the personnel.

Q. I am afraid it will be very difficult to secure proper persons for the purpose. I think vigilant societies will perhaps respect the Indian thoughts. Do you agree?

A. I think it will be possible to get good men.

Q. You have said that when the birth of the child is recorded a copy of the mother's birth certificate should also be produced. I now put it to you, will it not be very difficult to get copies of the mother's birth certificate?

A. I would make it easier for them. It should be made readily available.

Mr. Kanhaiya Lal: You are in favour of a preliminary enquiry before a prosecution is actually started.

A. I think it would be a good thing.

Q. If there is such a preliminary enquiry would you be in favour of transferring the case, after the enquiry has been made, to a matrimonial court consisting of a magistrate and one or two non-officials in preference to the ordinary court as these cases are of a domestic character and as that would inspire greater confidence?

A. I have no objection to that.

Q. Would you make these offences compoundable?

A. No.

Q. Compoundable with the sanction of the court.

A. No.

Q. Would you allow compounding to be done where the husband is only of 16?

A. No.

Q. Would you allow when the age is 14?

A. No.

Q. You think a birth certificate should invariably be granted to the reporting party. At present the birth is recorded and the certificate is not granted.

A. I don't know what is being done in the villages. I got a copy at least from the municipality.

Q. In Christian countries the ecclesiastical authority grants the certificate. Supposing we make it obligatory on the registering authority to grant a certificate here, do you think it would be helpful?

A. It will have effect after 15 or 16 years.

Q. Better late than never.

A. After 10 or 15 years there may be no need for that being done. I want what can be done to-day. I don't take the future of 15 or 20 years into account. Whatever will help us now it may be done.

Q. But what we are recommending is not for to-day. We are now providing for the indefinite future. Taking that into account would you recommend that a birth certificate should invariably be granted to the reporting party?

A. Yes.

Q. Another suggestion has been made. If we are going to have a marriage law and a law fixing the age of consent would it not be desirable that a report of all marriages should be made to a prescribed authority giving the names and ages of the couple, their parentage and such other particulars?

A. My own view is that marriage and consummation should go together. If the age for both is the same there will not be much use in this register. But in case the Legislature decides to fix the age of marriage at 14 and the age of consummation at 16 I think it will be in the public interest if it is made necessary that reports should be made of all marriages. It would be very helpful.

Q. Would you recommend that this register should be maintained by the municipal boards and district boards as in the case of births and deaths?

A. Yes.

Q. You say in extra-marital cases the age may be fixed at 20. Don't you think cases of hardship may arise and youngmen may fall a prey to temptation if we fix the age limit as high as 20?

A. I think men seduce women and not women, men.

Q. But there are women of loose character, in brothels and the houses of prostitutes and stray girls here and there also. It is possible that youngmen may fall a prey to them.

A. There may be immorality to earn a living. In the case of prostitutes and brothels I would not hold the man responsible. I will hold the women responsible.

Q. But at present there is no law holding women responsible or punishing them in any way.

A. When I say 20 I would not hold men responsible, I would hold women responsible.

Q. But suppose women are not held responsible by the Legislature.

A. In any case I would not hold the boy responsible.

Q. In order to obviate these cases of hardship don't you think it would be better to fix the age a bit low and extend protection upto 18 only. 18 is an age at which she can enter into contract, at that age she can dispose of property, she is a major at that age.

A. But her own morals are more important than property.

Q. In some European countries there is a lower age for unchaste girls and a higher age for chaste girls. Would you be in favour of that?

A. I would not be in favour of that.

Mrs. Nehru: What do you think should be the force of women police in each province?

A. It all depends upon the area and the population of a town.

Q. What would you say for a big centre, like Ahmedabad, Bombay, or Delhi?

A. For a big city I think one or two units would do. For smaller places I would have travelling officers going from place to place investigating cases. I don't think it will be a very big pest.

Q. Have you any idea of the expenditure it will involve?

A. It will require working out the whole scheme. I think whatever the expenditure may be it is worth spending. It is more important than any other expenditure.

**Written Statement, dated the 9th August 1928, of Mr. DAYABHAI
IJATRAM, Pleader, Ahmedabad.**

1. There is no marked dissatisfaction with the present provision contained in sections 375 and 376 of the Indian Penal Code, but a very sensible and intelligent class of the Public desires that the age of consent should be raised.

2. The consideration of health and growth of manhood and womanhood require the raising of the age of consent at least to 16 years—early marriages should be discouraged. They are a great means of undermining the natural growth.

3. The offences suggested in paragraph 3 are very rare in this part of the country (Gujarat). The amendment of 1925 raising the age of consent to 14 years, has very little effect in preventing or reducing cases of rape outside marital state or improper seduction of girls.

4. The amendment of 1925 has certainly been a means of discouraging early marriages and has stimulated public opinion as regards the raising of age.

5. The average age at which girls attain puberty in this Province is about 13 or 14 but in remote villages and surrounding districts, the age is 15 or 16 years. With the richer and well-to-do classes, the age of puberty is 13 or 14 and in the village community the age is higher.

6. In our part of the country (Gujarat) and surrounding region, cohabitation is not common before 13. Hardly any case comes to court.

7. There is no religious mandate known to me, which directs cohabitation before puberty—on the contrary, the religious rights performed at the time of marriage clearly contemplate that both the bride and bride-groom should have attained such an age at the time of marriage, so that they may understand the full responsibility and obligation of the new life they are entering in.

8. Ceremony contemplated in this question is not common in our part of the country. It is observed among Deccanics so far as I know.

9. Attainment of puberty is not sufficient indication of physical maturity to justify consummation. Looking to the climatic condition of India, I

would consider 16 (sixteen) years as the reasonable age when consummation should be allowed.

10. 16 years.

11. We have come across many cases in the circle of our friends and relations where cohabitation at an early age even after puberty, has resulted in the destruction of health of females. The general disease which results from this is consumption and nervous debility, and weakness of constitution. Females look old at a very early age and lose all their youthfulness. Their progeny is also weak.

12. I do consider early consummation and early maturity responsible for the diseases mentioned in this question.

13. The amendment of 1925 has no doubt developed public opinion amongst the intelligent and educated classes for extension of age of consent to 16 years. It is these classes who guide others and their opinion should count a great deal.

14. No.

15. So far as I know, no difficulty has been experienced in determining the age of girls in connection with offences under sections 375 and 376.

16. The difficulty of determining the age would be reduced to a certain extent by raising the age of consent over 16 years.

17. We would desire separation of extra-marital and marital offence into different classes. The nature of punishment in each case had better be determined by those in authority.

18. As regards the procedure for trial of offences with the marital stage, the offences should be bailable and the accused should not be arrested without a warrant.

19. We cannot suggest any.

20. The raising of marriageable age would be more effective for remedying the present existing evils. The raising of age for marriage is favoured by public opinion at least amongst the educated classes.

21. We would prefer the strengthening the penal law for attaining the object in view. Progress of social reform by means of education is extremely slow in remedying the evils. We must act up to the well known Sanskrit proverb **राजा कालशंकर रहमा** ! The King should be the course of bringing about a certain opinion amongst the people.

Oral Evidence of Mr. DAYABHAI IJATRAM, Pleader, Ahmedabad.

(Ahmedabad, 19th October 1928.)

Chairman: For how many years have you been a member of the Bar?

A. For the last 37 years.

Q. Are you connected with any social reform movement among the Gujarati people?

A. I am not connected with any social movement nor with any political movement.

Q. Do you know the conditions of marriage that prevail here amongst all class of people or only in your community?

A. In my own community as well as in the neighbouring communities. Kunbis, Golas and Ghancies. I belong to the Nagar community.

Q. Do you know anything about the Brahma Kshatryas?

A. They are our neighbours. They live in Khadia locality. I know them all.

Q. What is the marriageable age amongst the Nagars?

A. At present it has gone up to 16, 18 and 20.

Q. What is the more common age?

A. 10 years back the age was 12, 13 or 14. It has now gone up to 16 and onwards. During the last 10 years there has been a great change so far as the marriageable age of the girls is concerned.

Q. Is it among all classes?

A. All higher classes, Nagars, Kshatryns and some Banias too.

Q. Is there a large percentage of cases in which older men take girls of 13 and 14?

A. There are some exceptional cases. I know of two or three cases. They are very few.

Q. What do you think has brought about this change in the last 10 years?

A. I think it is due to education, due to the good many people going to England and coming back and giving their experiences. Hundreds of men are going to England. 25 years back hardly one or two a year went to England. They say we must move with the times. Therefore among the educated classes the marriageable age has increased and early marriages have almost disappeared.

Q. Do you think the amendment of 1925 had anything to do with it?

A. Not much.

Q. Do you think the law is known about here very much?

A. Law is known to the people who read law.

Q. Have you any reason to believe that amongst the classes that marry at a small age there is any cohabitation before 13?

A. Might be one in a hundred. There may be very rare cases, otherwise I have not heard of any.

Q. Do you think that cohabitation at 14 or 15 might be more common?

A. 15 would be common.

Q. I don't think, from what you say, that there is any cohabitation before puberty?

A. There is generally no cohabitation before puberty except in very rare cases.

Q. Does cohabitation take place soon after marriage?

A. It depends upon the condition of the girl.

Q. Would you say it takes place soon after puberty?

A. Soon after puberty it does take place.

Q. Do many of the girls mature earlier than 16?

A. Very few. It depends upon the society they live in, their home conditions and other things. They do not mature generally before 16.

Q. And just about that time they are married.

A. They are married at 15 or 16.

Q. Do you think, however, there is still a large class of people leaving aside the advanced classes, who still marry their girls at 13 or 14?

A. Amongst the Kolies, Ghanchies and other low classes marriages take place at the age of 3, 4, 8, 11, 12. Among the Karwa Pattadars there is a custom of mass marriages. Generally every 12 years the marriages take place. All children are married irrespective of age. The girl may be 1 year old or 12 years old; that is no consideration.

Q. You seem to think that the fixing of marriageable age is a better remedy than the Age of Consent for putting off maternity.

A. Yes.

Q. Why do you think so?

A. I think 16 years would give the girl more education. I think motherhood would be safer at that age.

Q. What age would you have for extra-marital cases?

A. 17 or 18.

Q. What is the age of marriage among the Brahma Kshtryas?

A. 25 years back infant marriages were taking place among them. Having advanced much in education and having got high positions in Government service they are now putting off marriages. They belong to a high class. Their girls are not married before 17 or 18. I can give you concrete instances where the girls of 20 and 25 are still unmarried.

Q. Do you think that the advance in age amongst Brahma Kshtryas has led to the girls being better as mothers and their children also being better?

A. I see that the children born at the age of 25 are quite hale and healthy.

Q. If you compare them with the children of those amongst whom early marriage takes place, do you think they are distinctly better?

A. They are, no doubt, better. On account of climatic conditions some of them may be looking very lean and very delicate, but still they are robust.

Dr. Beadon: In the case of these mass marriages do the girls remain under the guardianship of their parents or can the husbands call them at any time they like?

A. Soon after marriage they remain under the guardianship of their parents. Till the girl attains puberty she is with her parents. When she is 15 or 16 she is sent to the husband's house. Then, of course, she is under the control of the father-in-law.

Q. Does the father-in-law choose to call her before puberty and would it be possible for the parents not to send the girl?

A. If the parents think it better they may keep the girl for a year or two more. But if the girl is not sent for a long time the husband rushes to the court and files a suit for the custody and would get the girl legally.

Q. In answer to question No. 11 you say I have come across many cases of early motherhood where the health of the girl has been ruined. Would you mind giving us details about one or two. Can you give me, for instance, the ages of the girls?

A. In my own community I can give you a case in which the girl was married at the age of 13 or 14. Soon after her marriage she conceived and soon after that the girl got consumption and she died two years after.

Q. When was that?

A. Some three years back and there are many other cases of consumption like this.

Q. In the case of this particular girl were her parents fairly well off?

A. They were rather poor and the hygienic surroundings were not very good.

Q. Have you noticed any special injury in these premature mothers?

A. No special injury. There are cases of consumption.

Q. What is the condition of children?

A. Some children are healthy but in most cases the children die soon after.

Q. Would you say that half of the children die soon after birth?

A. One-third of them die soon after birth within the first two or three months. It was only yesterday that a child died.

Q. What was the age of the mother?

A. The age was 16.

Q. Was it the first child?

A. Yes.

Mr. Bhargava: So far as these provision relating to the Age of Consent are concerned, would you like them to be of a preventive character or of a punitive character?

A. No preventive measures would do.

Q. I understand you want a law against early marriages as well as against early consummation.

A. I would like to see Sarda's Bill passed.

Q. As regards the procedure of these trials, would you like that a preliminary enquiry should be made before prosecution is started in cases which are brought court?

A. It is a very delicate matter. The enquiry should be held. It should be a compoundable case.

Q. Would you like that every person may be able to bring a case against a husband in case of breach of the law or would you like that only the wife or her parents should bring a case? Whom do you want to be the complainant?

A. The wife or her parents.

Q. You have said that in these communities where mass marriages take place the husbands rush to the courts for custody of the wife.

A. That is very common among the Audich Brahmins. Among them the number of girls is greater than boys. They marry two or three wives. They marry one wife and desert her and then they marry a second wife and desert her. Every time they get something from the father-in-law.

Q. She can sue for maintenance?

A. She cannot, she is a girl of 8 or 9 years.

Q. Would you like that in a case of that nature the court may be armed with a power under the law relating to the restitution of conjugal rights to direct that under a certain prescribed age, say, 16, the husband cannot get custody of the wife? Would you like a law of that nature?

A. I think it would be fair.

Q. Would you like that these cases should be tried by a First Class Magistrate?

A. Yes.

Q. You think that as there would not be many cases of this sort, Government would hardly appoint a special court, and the District Magistrate or the First Class Magistrate can try them?

A. Yes.

Q. The case should not be enquired into by the police.

A. No.

Q. You were speaking about the case being compoundable. Would you prefer it to be compoundable above 14 or at any age?

A. Above 14.

Q. With the sanction of the court.

A. Yes.

Moulvi Muhammad Yakub: Do you think that the present day youth are physically stronger than the youth of the olden days? What was the condition of the youth, say, 50 years back?

A. The present day youth are not so strong as those of 25 years back. Even to-day if we compare the children born in the cities and in the villages, possibly the children in villages are more robust.

Q. What was the age of marriage among the Hindus, generally say, 30 years back.

A. It was under 10.

Q. And what was the age of consummation then?

A. 14 or 15 and sometimes 12 also.

Q. Then the children born in those days were quite healthy.

A. If they were born after the age of 16 even in those days. Some of those born at an early age kept very bad health and they were very weak.

Q. Would you like a law restricting the number of wives?

A. No. Why should there be a law? Even according to Koran Moham-
madans can have 4 wives.

Q. But there are very hard conditions laid down and in modern days
even it is impossible for a man to carry out those conditions.

A. I am against plurality of wives. But according to our Hindu prin-
ciples of religion some ceremonies have to be performed by children. A man
who has no child is considered to be most unfortunate. Therefore sometimes
they marry a second wife.

Q. For this purpose you have got adaption among the Hindus.

A. But many people would like to have their natural children.

Q. You said that the age of puberty is 15 or 16 in the case of richer and
well-to-do classes.

A. Yes.

Q. Is it so high among the rich class?

A. Yes. Among the richer classes they get good diet, they are brought up
in luxuries and therefore they are naturally healthy.

Q. And therefore they ought to attain puberty later.

A. They appear to attain it earlier. They are brought up in luxuries.

Q. In villages?

A. It is higher among the poorer classes.

Q. We have got two measures before the Indian Legislature. One is for
raising the Age of Consent and the other is for fixing the minimum age of
marriage. Which of these two measures would you prefer to have?

A. I prefer fixing the age of marriage.

Q. Why do you want to make a difference, if a husband commits rape
upon his wife and if it is committed by a stranger, why do you want to
make a difference in the trial of these two cases? Injury is the same and
grievance is the same.

A. After all the husband is lawfully married to his wife.

Q. For instance, if a husband cuts the nose of his wife and a stranger
cuts the nose of a woman you don't make any difference in punishment in
that case.

A. As a lawfully married wife the husband is entitled to have full control
over her. It is only on account of age that you say that there is rape before
13. After all she is a lawfully wedded wife, there should be some difference
between a stranger and a husband. After all the husband is a human being
and he has his passions and may not be able to control them sometimes.

Q. Would you also punish the parents of the boy? It is they who bring
about union and such environments.

A. They do it for the welfare of the girl. There is a good motive. They
may send the girl at 12 never knowing that she would be treated like this.

Q. You punish the poor boy and you don't punish the parents who are the
chief cause.

A. The actual party to the offence is the husband.

Q. Are not the parents the abettors?

A. You cannot call them abettors, they connive at it.

Q. But if the parents do not give facilities cohabitation could never take
place.

A. You cannot call them offenders. When once the wife comes to the
house of the husband she will naturally like to have intercourse with her
husband. They will like to have a talk in a secluded place, and that you
cannot prevent.

Q. But why should we punish the boy also in that case?

A. He should not be punished.

Q. But according to the present law he is liable to punishment if the wife is under 13.

A. It should be a very lenient punishment. Simply because they have not followed the law, the punishment must not be severe.

Q. How much should it be?

A. A fine of few rupees.

Q. Would you give the power to complain to some vigilance society or some panchayats, such a case very seldom comes to light?

A. I would like to give this power to some panchayat or village society.

Mr. Mitra: Is there any notion amongst the village people or amongst the women that there is some shastric injunction in favour of early marriage in this part of the country?

A. There is this notion amongst the ignorant class of people. In olden times people used to believe that early marriage is according to the shastras and if the early marriage is performed it is better.

Q. Do they mean by it anti-puberty marriage or some fixed age?

A. They thought that it was according to the shastras to marry a girl before she was 10. But now the old custom has disappeared and girls are married even at 25.

Q. Do you think there will be no agitation even amongst the village people if the age of marriage is fixed at 16?

A. No. On the contrary they are also of the opinion that the age should be raised.

Mr. Mudaliyar: In an ordinary Hindu household the girl is married generally at the age of 14. The girl is immediately sent to the house of the husband. In all probability the first consummation takes place with the entire knowledge of the parents of the husband. The boy is only 16 years old and he is himself as much a creature of circumstances as the girl is. Would you say in that case that the parents are not guilty?

A. It is a very delicate question. Even if the parents of the boy allow them to take that much liberty it is out of love and regard. They think that as the wife is a lawfully wedded wife they should not interfere. They do not take it to be an offence to allow them to have that liberty.

Q. If the grown up parents of the boy do not think it to be an offence, do you think it is fair to treat the boy as the offender?

A. Advanced people might take it to be an offence, but the labouring class people, poor people, what do they know of offences of this nature? They say that she is a lawfully wedded wife and it is their right to cohabit.

Q. If the parents were held liable for allowing this much liberty to their sons and were taken to task, will not that discourage early cohabitation? As a matter of fact under the law if it could be proved that any parents actively brought about cohabitation between 12 and 13 they could be charged with abetment and punished.

A. That is bad.

Q. You surely do not suggest that the law should be changed.

A. It requires to be changed a bit when the Age of Consent is raised.

Q. When the Age of Consent is raised to 16 as you suggest then perhaps different considerations might have to be taken notice of. In that case if the parents could prove that they were in no sense liable for this sort of thing having taken place, for the boy must be over 18, the parents would not be liable. But under the existing law the parents ought to be made liable.

A. Therefore I say any severe punishment need not be inflicted.

Q. Now as regards punishment you have said this is a matter for the vakils and courts, but I thought it is eminently a matter in which the public should be interested. What punishment would you suggest for marital cases?

A. The punishment ought not to be very severe. For the husband a fine may be provided and for the parents also fine and in addition to that as they are older people we might give them some bodily punishment.

Q. Would you suggest fine whatever the age of the girl may be?

A. Above 13 I would suggest fine.

Q. And below 13 it might remain as it is.

A. It is very hard.

Q. Have you ever known a case in which the husband has been transported for life?

A. No.

Q. Therefore even if this maximum punishment is there, judges have always taken a very lenient view of the case and the full punishment is seldom awarded.

A. That is true.

Q. What is the differentiation you would like to make between the extra-marital and the intra-marital. Would you call an intra-marital offence by a separate name?

A. I would prefer that.

Q. As regards procedure I understood you to say that it should be a non-cognizable offence, that police should have nothing to do with it and that it should be a bailable offence. Would you also like it to be a compoundable offence with the sanction of the court or without the sanction of the court.

A. I would suggest compounding outside the court.

Q. But you yourself say that marital cases are seldom brought to court. No cases come unless the feelings between the husband and the wife are very much estranged and if ever such a case comes to court every influence is brought to bear in order that the case may be withdrawn. Would you not make the trial of these cases farcical if you permit compounding outside the court?

A. In some cases, if you like, the compounding may be done with the sanction of the court. These are very delicate matters.

Q. Don't you think that it will defeat the very purpose of law if every case could be compounded?

A. There may be some cases which may not be compounded at all.

Q. That may be where the parties are bitterly opposed to each other. It will be the extraneous influences and not the gravity of the injury to the poor girl that will bring about no compounding. Is it not?

A. In that case it may be with the sanction of the court.

Q. You have quoted a Sanskrit proverb. From what Sanskrit authority have you quoted that?

A. It is not a very high authority. I quoted it from a book I got from my friend.

Mr. Kadri : In answer to question No. 8 you have said no Gaona ceremony is performed in these parts. We are told there is a ceremony known as "Aun" which is performed in these parts. Is that so?

A. It is only among the Daceanies and some Gujaratis that it is performed. It is performed when the girl is sent to her husband's house.

Q. Does it obtain among all classes?

A. No. Only among Brahmins. It is neither amongst the Banias nor among the Jains.

Q. What is generally the age at which this ceremony takes place?

A. Now it is 15. Formerly it used to be 12.

Q. Some witnesses have suggested that instead of penalising consummation if you penalised this ceremony that would be better and thus an age

should be fixed below which this ceremony may not be allowed to be performed. What is your opinion?

A. Penalising this ceremony would be too hard. Penalising consummation perhaps may have some effect. This ceremony is performed just on the day when the wife is sent to the husband's house. It does not mean that when a girl is sent to the husband's house after this ceremony consummation necessarily takes place. Generally after two or three days the girl comes back to her own house. This ceremony does not necessarily mean consummation of marriage.

Q. We are told that the system of keeping birth registers is very defective here. Can you make any suggestion to make it better?

A. These registers are not properly kept. Good many births and deaths are never reported.

Q. But are those people not liable to be punished?

A. They have not yet been fined or punished. I think it will be well if Government passes some orders. If the municipalities were more vigilant in the matter then of course proper record could be kept.

Q. In that register no name of the child is mentioned, would you make it obligatory on the parents to make supplementary report after the namkarn ceremony is performed?

A. I agree.

Q. It has also been suggested that the age of the mother might as well be mentioned.

A. Yes.

**Written Statement, dated the 9th August 1928, of Diwan Bahadur
AMBASHANKAR UTTAMRAM MALJI, Honorary Organiser,
Co-operative Societies, Broach.**

1. Some dissatisfaction was felt against an offender other than the husband committing the rape offence at an age when the girl has not sufficiently developed for a married life. Outside educated classes, no such dissatisfaction is known regarding consummation of marriage by the husband at the age of 13 complete. The original limit of 10 is 13 at present.

2. With a view to discourage wrongful liberty at the hands of an outsider if the horrors of punishment are retained till a longer age when the girl can have an intelligent idea of consent understanding her own welfare the State will protect the girl's person and reputation, still more. At any rate none will be sorry for the change. So much for the second part of the query. As regards the first part, I am afraid, the husband's action or misdeed from the point of view of incomplete development of the girl, need not, after her age of 13, be looked upon so seriously although any criminal neglect or culpable liberty will not exempt him from other less rigors of law and I am inclined to think that for the sake of one year (from 13 to 14) no husband should be prosecuted for the new offence called "illicit married intercourse" a mild type of "rape" even though the girl in any given case may have been completely or substantially developed for sexual intercourse. The proof of age is again very often to be based on very slender materials and there is hardly any justification to take a more serious view. In the absence of the explanation as is added to section 375 and in the light of the word "illicit" mere penetration will not amount to an offence under section 376A. All the same the present law needs to be retained in the case of a married husband as a salutary preventive measure.

3. Such crimes are not frequent in my part of the country. Particularly amongst the education section. Some uneducated communities may only differ in point of degrees. I do not believe the amendment of 1925 has led to any appreciable result by one year's change. Education will, it is hoped, lead to better results.

4. I feel great difficulty in answering this question straight way. Perhaps this will depend more on education and apparent weak constitution than on the small increase of the age limit of 1925.

5. Generally at the age of 13 when the girl's constitution is every way sound. The latter part of the question does not survive.

6. No, in answer to 1 and 3 but yes in answer to 2 in many instances, particularly where notions of સ્વામિત્વ obtain so much. No case to my knowledge has come to court.

7. Partly that is so. Manusmriti may be seen with advantage.

8. Yes, but to a very limited extent and it generally coincides with the consummation of marriage somewhere about the attainment of puberty or very soon thereafter.

9. No, and no rigid age limit can be given to indicate the required developments.

10. 15 years is the usual age of discretion both under the Hindu and Mahomedan laws.

11. Yes, Sessions Case No. 17 of 1913 on the file of the Session Judge of Broach. The girl was aged 13 but was not fully developed in body. She died within a few hours of the intercourse which was rather forcible and resulted in a very seriously injuring the girl. The accused husband was convicted under section 304A, Indian Penal Code.

12. Yes.

13. Not that I know of. On account of the amendment of 1925. Public opinion, however, gathers ground for late consummation of marriage on account of very disastrous results of weak constitutions.

14. These are sentimental matters and the opinion of some uneducated women favoured early consummation. Education only will set it right.

15. Experience has shown that the medical evidence to be relied upon should not be inferior to that of the Civil Surgeon of the District but when birth date could be traced. Assistant Surgeons may do. The latter have not yet made a very reliable impression on the public in point of their opinions.

16. I do not think so.

17. The punishment section (376) is in order. The distinction mentioned in the first part of the question does obtain there and rightly.

18—19. No. None, except that the husband be tried by a first class Magistrate preferably an Indian.

20. I am in favour of the first view. Public opinion does not seem to have been cultivated. Hardly 1 per cent. of the population may be thinking anything of the kind.

21. The latter course seems to me more practical but in view of the uneducated state of the country, legislation is inevitably necessary.

Oral Evidence of Diwan Bahadur AMBASHANKAR UTTAMRAM MALJI, Honorary Organiser, Co-operative Societies, Broach.

(Ahmedabad, 19th October 1928.)

Chairman: Since when are you the Honorary Organizer of Co-operative Societies for the Northern Division.

A. From 1913 onwards.

Q. Does that bring you in contact with villages?

A. I have to move throughout Gujerat.

Q. To what community do you belong?

A. I belong to the Brahama Kshtrya community.

Q. When does marriage take place among the Brahma Kshtryas?

A. Not before 14.

Q. Somebody said that it does not take place before 16 and preferably 18.

A. We can go up to that. It does not take place before 14. The age has advanced no doubt.

Q. Is your community advanced in education considering the other communities?

A. I think so.

Q. In your answer to question No. 2 do you object to the change simply because it is one year?

A. Principally on that ground. If the Government wanted to take a leap it should have been taken at once. There is no use having it by bits.

Q. If it had been changed to 14.

A. I would not object.

Q. In answer to question No. 20 you have said that you are in favour of marriage legislation.

A. In point of marriage legislation the less of interference by the Legislature the better it is. I would have something on the lines of Sarda's Bill.

Q. What is the ground for your being in favour of marriage legislation?

A. Generally in such matters it is the parents' will that carries the day. If we fix by law the age before which no marriage is to be celebrated, it will answer the purpose very well.

Q. What should be the age for marriage purposes?

A. 11 for girls and 16 for boys.

Q. But even now marriages do not take place before 14.

A. That is true, but that does not mean my rule should apply to the whole of the country.

Q. What would be the age for consummation?

A. 13 for marital and 15 for extra-marital cases.

Q. Up to 13 you think there is some justification for fixing the Age of Consent after that, don't you think it should be an offence?

A. No.

Dr. Beadon: Have any cases come to court after the amendment of 1925 in which the husband cohabited with a girl of less than 13?

A. No cases have come to my knowledge.

Q. Do you think such cases occur?

A. I have not heard of any case. Until there is any report we cannot presume.

Q. Besides the case of 1913 has any other case come to your notice after the amendment of 1925?

A. No.

Q. Have you seen any case in which there was injury to the child as a result of early cohabitation between husband and wife? Do you think that the children of these immature mothers are affected in any way?

A. They are affected.

Q. Can you give any instance?

A. The death registers in the municipalities will show that.

Q. Can you give any instance amongst your own circle within your personal knowledge?

A. I cannot give you any specific instance. We have found that the mothers die at an earlier age.

Q. Can you give me anything about the children?

A. I cannot give any specific instances. The children do not live long.

Mrs. Nehru: You have said that no dissatisfaction with regard to this law has been manifested. Have you heard of some women's meetings that took place here last year and before that in which resolutions were passed asking for the raising of the Age of Consent?

A. I have read about that in the press.

Q. Have you also heard about 10,000 women having put their signatures to the demand for raising the age to 16?

A. Yes, I have. I only wish that it be carried into effect.

Q. Do these things show dissatisfaction or not?

A. No. In a presidency-town it may be, but if we go the country side you will find that they are in the background, and do not show any dissatisfaction.

Q. When 10,000 women sign a demand like that would you not call it widespread dissatisfaction?

A. If it obtains in a presidency-town only I would not call it.

Q. Do you think that at 15 a girl is intellectually mature to understand the consequences of her act?

A. To a much larger degree.

Q. Do you not think that under the conditions in which Indian girls live hardly know anything about the world till a very late age?

A. My opinion is that they are made to know these things much earlier.

Q. Do you not think that there is a need for protection after 15?

A. At the hands of the law no more protection is necessary after 15.

Q. Supposing a girl is 15 and she is persuaded to give her consent and seduced, even though she does not understand the consequences of her act, would you not punish the man?

A. All I can say is that if there is consent obtained by fraud, it is not consent. Ordinarily I will attribute consent after 15.

Q. In your statement you say that consummation before 15 is injurious to the health of the girl. If it is so do you not think that it is necessary to protect the girls before 15?

A. I do believe it.

Q. What method will you adopt to protect the girl?

A. If a legislative provision is made prohibiting marriages up to a certain age that would be a better remedy.

Q. If it is not possible to have it?

A. Then things must take their own course. Even in that case I would not amend the law in marital cases.

Q. What is the reason?

A. There is some autonomy in married life; and I would not have any interference from outside. It is more a subject for home education than for the State to interfere.

Q. Do you not think that infant mortality is very much due to early consummation of marriage?

A. I think so.

Q. Should not therefore the State interfere and prevent it?

A. It should prevent marriages which are the root cause.

Q. If it is not found possible to pass such a law won't you agree to any other alternative by which these evil results can be prevented?

A. Personally I have no faith in a legislative enactment. Only recently we have had an amendment and I would not go beyond all at once.

Q. What are the results you are afraid of?

A. My first point is that in marriage life there should be less interference from the State unless as a matter of fact it requires the serious attention for the State to interfere. That is possible even under the present law. The

case I have quoted gives the law on the subject. That is another remedy and this will apply to this act also.

Q. Do cases like that come to court?

A. Very rarely.

Q. What is the reason of their not coming to court?

A. That is because nobody would dare to complain in the first place. Secondly, these bring about difficulties in the future married life of the parties.

Q. By difficulties do you mean the difficulties brought about by the imprisonment of the husband?

A. Yes.

Q. Supposing the present sentence of imprisonment is reduced to fine only, would more cases come to court?

A. I do not see any objection that way. It will have its effect to a degree.

Q. Will it bring more cases to light if certain agencies are appointed, say, for instance, social reform associations to make complaints?

A. If you carry on propaganda through that sort of institution legislation would be unnecessary.

Q. The legislation may be found useful as a help to propaganda, to give such help to social reformers as may be found necessary.

A. There is one law already existing for the purpose. Raising the age limit is not so serious a question. From my point of view social propaganda will be more effective. By simply punishing a criminal, you won't be teaching him the married life that he should lead.

Q. Would you have the same punishment before 12 as well as after 12 in marital cases as exist at present?

A. If you want to raise the age, I would prefer fines only in the case of marital relations to imprisonment which should be resorted to only in exceptional cases.

Q. Would you have fine below as well as after 12?

A. I am not changing the present law. The Magistrate will use his discretion.

Q. If the age is increased?

A. You will have to amend the law; but whether you should retain the same punishment or not, I cannot say.

Mr. Bhargava: As regards seduction the age is 16 and for rape it is 14. Do you not think outside marital cases girls require protection up to a more advanced age?

A. I am for 15 complete. If you raise it to 16 it does not matter to me. We should see that the other provisions are consistent. I would prefer 16 for outside marriages.

Q. As regards cases in which persons procure girls the age is 18 under section 306A.

A. That is a different matter altogether. It is an offence of the person who procures the girls.

Q. Supposing he procures the girl for himself?

A. We are considering the offences within marriage and outside marriage. There you are dealing with a person who does nothing himself except seducing or procuring the girl for the purpose of satisfying the lust of others.

Q. Supposing he does it for himself?

A. Then he would be liable to the rape sentence.

Q. Supposing the girl is willing it would not be an offence because the girl has consented.

A. In that case the business ends with the consent.

Q. When a man procures a girl for others the age is 18, but if he procures the girl for himself he goes scot-free if he has committed rape on the girl with her consent after 14. Why should you be lenient towards the man simply because he has seduced the girl for his own purposes?

A. If the consent is a free consent, the man is not to be punished. But if the consent has been obtained otherwise than freely it is obtained by fraud.

Q. In the case of extra-marital relations the girl does not realise the consequences of her act and it is not therefore consent in the real sense of the term. Would you therefore agree that in extra-marital cases the age may be raised to 18?

A. I am not for bringing these within the powers of the legislature.

Q. It is not a matter relating to marriage at all.

A. You bring these offences within the provisions of the penal law and if the provisions are adequate there is no reason to disturb its consequences.

Q. As regards rape they are not adequate to-day.

A. Outside marriage I agree to anything. The horrors of punishment should be maintained on any account.

Q. What age would you prefer?

A. I do not mind any age.

Q. So far as married life is concerned, you would like autonomy in marriage life?

A. Yes.

Q. So far as married life between a boy of 18 and a girl of 11 is concerned, do you want autonomy?

A. Not at all.

Q. Unless the girl is 14, is she not able to give her consent?

A. No consent is necessary at all here. The marriage is for a particular purpose provided the age is not less than the age prescribed by the law.

Q. Do you propose that the age for marriage should be 11 for girls?

A. In England also if I accept the statement made by Pandit Malaviya it is 12 years.

Q. So far as the question of the age in England is concerned, marriage before the age of 12 is null and void. But Sarda's Bill does not make the marriage void.

A. The age limit of 11 should exist for legislative purposes.

Q. Do you think that the age should be 11 because you think that before puberty marriage should be performed?

A. Yes.

Q. Is not the age of marriage 14 or 15 in practice in Ahmedabad?

A. In my community it is never less than 14 for marriage purposes.

Q. In your community there is no such notion that marriage should be performed before puberty?

A. No.

Q. Practically then there is no objection in your community to the age being fixed at 14?

A. I am not suggesting laws only for my community, but for the whole of Gujarat.

Q. Did you ever go to the villages and ask them these questions?

A. I do not put these questions, but I can know their mind all the same.

Q. This Committee went to some of the villages and the people were for raising the age. What would you say to that?

A. Then do so at once.

Q. Supposing they do not agree?

A. Then we will have to meet them half way.

Q. I understood you to say that the evils are not very serious. Which of the two did you mean, the question of the raising of the age of marriage or the Age of Consent?

A. The two things are different. If you stop early marriages you will bring about better results. Outside marriages you can do anything you like.

Q. Supposing the ages are fixed at 16 and 11 for marriage, do you think the evil will be touched?

A. It may be touched in various ways. I do not think that legislation in such matters will have greater effect. The present legislation as it is inadequate for the purpose of the Age of Consent.

Q. By having the age of marriage at 11 you cannot secure your object.

A. In difference to public opinion you should have it at present at 11.

Q. Are you in favour of compulsory primary education?

A. I am.

Q. Are you in favour of the drinking habit being made a crime?

A. I am personally in favour of abolition altogether if that can be done by law.

Q. Are you against gambling laws?

A. Yes.

Q. Supposing as against compulsory education there is a hue and cry, would you consider the opinion of the public then?

A. It is a question as how you compulsorily educate the people. Will it be at State expense or out of the expense of the individuals? If it is at the expense of the State I will not care for the opposition of the public.

Q. Similarly as regards drinking and gambling?

A. Yes.

Q. Supposing the State pays for all these cases coming to court?

A. That would be leaving your house at the disposal of the court.

Q. So that if a good thing is to be done, will you not care for the uneducated public opinion?

A. The State has to care for public opinion. Sometimes even if the public opinion is wrong the State has to respect it.

Q. What will it be then?

A. A hanging sword.

Q. You say that medical evidence should be that of a Civil Surgeon. Would not Assistant Surgeons do?

A. In cases in which there is a difficulty about age generally the Assistant Surgeon cannot be relied upon for such purposes.

Q. Why do you say that you are not in favour of raising the Age of Consent in marital cases by one year only?

A. If you had done so at the time the last legislation was made I would not have resented it. I do not like frequent changes in the law.

Q. Supposing the amendment of 1925 had fixed the age at 14 or 15?

A. I would then have agreed.

Q. Our ultimate object is to raise the age to the point where medical opinion would say that that age is safe for motherhood.

A. I am not in favour of medical opinion.

Q. You are in favour of 15 being fixed as the Age of Consent within the marital state. If 15 had been fixed in 1925, would you have accepted it?

A. I am not for tit-bit amendments.

Q. Are you agreeable to 14 complete?

A. Yes. 15 outside marital state and 14 inside. I am opposed to any legislation off and on.

Q. Do you think that people do not know the change in the law?

A. Ignorance of the law is no excuse.

Q. Do people know it?

A. Several people may say they do not know it. The law is not sufficiently known in fact.

Q. If it is not so widely known what is your repugnance to an increase in the age?

A. My only objection is that you should not do it tit-bit.

Q. But people do not know that it is tit-bit.

A. I was giving my personal opinion. I do not say that people are of opinion that it is a tit-bit.

Q. You referred to a case in which a girl died of early consummation. What was the punishment inflicted on the husband?

A. I have got a copy of the judgment. The order is "The accused is convicted of an offence punishable either under section 304A or under section 338, Indian Penal Code, and is sentenced to simple imprisonment for six weeks." The judgment is dated Broach, 21st April 1923, and the presiding Judge was Mr. P. J. Talyarkhan.

Q. Do you approve of the sentence?

A. The sentence was considered to be adequate both by the Sessions Court and the High Court.

Q. How do you say that the High Court considered that the sentence was adequate?

A. They did not disturb the sentence passed by the Sessions Court.

Maulvi Muhammad Yakub: In your community generally do marriages take place between 14 and 15?

- A. Somewhere after 14.

Q. Is it due to education in your community?

A. Yes.

Q. Do you think it is an advanced state of society?

A. It comes to that.

Q. Do you think that this advanced state should prevail throughout the whole of the country?

A. I do not see that. That depends upon the conditions of life in the different parts of the country.

Q. Do you not want there should be the same advance everywhere as in your community?

A. I do not think that it is a question to my liking.

Q. What is your opinion?

A. There is nothing wrong in that. It would be better.

Q. Is it not a fact that the babies born in your community are healthier and the girls bear the burden of motherhood more easily than the girls of other communities?

A. I do not think that they have that sort of strong physique.

Q. Some of the witnesses have said so.

A. If they have compared things their opinion may be accepted.

Q. Am I right when I say that you do not like gradual amendments of the law, but you think that if a thing is to be done by law it should be done at once?

A. You must have some time to breathe.

Q. Do you know that at present no law is fixed for the age of marriage?

A. None.

Q. If any marriage age is fixed it would be for the first time and if we therefore fix the age of marriage at 18, would you be satisfied?

A. That would be too much.

Q. What would you have?

A. 11 for girls and 16 for boys.

Q. Would you like that it should be fixed by legislation?

A. Yes.

Q. Should consummation take place immediately after marriage?

A. 13 at least should be complete.

Mr. S. C. Mitra: Have you any objection to fixing a higher age for extra-marital cases?

A. I have no objection.

Q. Even if it is raised to 18 or 20?

A. I have not stated that it should not be raised. If it is raised I won't mind.

Q. Do you think there will be objection from the orthodox people?

A. No.

Q. May I know what you think would be the age for marriage according to your personal opinion?

A. Apart from legislation we can take the standard that is given by Manu, that is, 16 and 24.

Q. Do you think that there should be no legislation in these matters?

A. If people can be induced to that view nothing better.

Q. As regards legislation do you think there will be hardship amongst the orthodox people?

A. Except in the case of offences of a serious nature, executive interference in married life is objectionable. No one would like the autonomy of a married life to be interfered with. If you can improve upon the age of marriage that will be all right.

Q. Do you think that if we fix the ideal age of 16 there will be hardship?

A. It will be resented very much.

Q. If it is possible to eliminate all these hardships, would you be in favour of a marriage law?

A. I am in favour of a marriage law. But the law must be such as can be enforced. You should not have a law and then think of riots.

Q. Is there anything in the Scriptures which lay down any rule on the subject, or is it only due to custom?

A. It is due to custom; but there are some Smritis and Srutis which are brought down to convenience.

Q. What is that particular notion prevalent among the people.

A. The parents are more responsible for bringing about this sort of things. They talk of marriage from the time of the childhood of the girl.

Q. What is that particular notion; is it ante-puberty marriage or ante-puberty consummation?

A. There are two things. The first is that ordinarily parents think that marriages should be celebrated before puberty and that it would be a sin if the marriage is delayed.

Q. So far as your community is concerned, are there any ante-puberty marriages?

A. My community is a very small community. If you take the country-side into account it is different.

Q. Do you think there are lots of marital cases below 13?

A. Yes. Amongst the Kadava Kunbies even babies in the womb are married.

Q. Do you like to change the name rape in marital cases?

A. No; I think that it may remain as it is.

Mr. Mudaliyar: Do you believe in certain people guiding public opinion?

A. Yes.

Q. Do you think that the masses of the people are not the ultimate exponents of their own ideas but that the intelligent people should lead them?

A. Yes.

Q. Are you aware that several ladies met in Bombay and agreed upon a change?

A. They did represent their own opinion at any rate.

Q. Are you aware that in Ahmedabad many thousands of people signed a memorandum fixing the age of marriage for girls at 16?

A. I am not sure whether those people understood what they did.

Q. In your work as an organiser of co-operative societies have you ever talked to people about the raising of the age of marriage?

A. No; that is not my function. Casual talk we have had sometimes when questions like this were discussed. It might interest you to know that in some places they do not observe even the menstruation courses.

Q. If you are so much against this legislation, I would like to know whether you have moved your little finger towards the education of the people on these matters.

A. I am not a social worker in that direction. If I mix up in those things, my legitimate work will suffer.

Q. Would you like the social reformer to go about and make the people realise that they are doing a wrong thing. You object to legislation; but do you believe in the representative character of your friends in the Council and the Assembly?

A. I do trust in their efforts, but if the result of their efforts is a hanging sword, it is much better not to have it.

Q. Would you abolish those laws altogether?

A. If the law is useful it is all right. If it is a dead letter you can abolish it.

Q. What is the purpose in your fixing the age of marriage at 11?

A. I want to go on the lines of least resistance.

Q. You cite the case of England. Do you not think that in England the marriage is void under 12 and no marriage usually takes place earlier than 15?

A. It holds good in this respect that even in their advanced stage they seem to think that the minimum should be prescribed.

Q. Are you aware that in England there is an agitation led by Lady Astor for raising this age of 12 to something like 16 or 18, because the people in India point to it and say that even advanced countries like England have fixed the age at such a low figure.

A. I wish they did so, so as to serve as an example. But we shall consider it when the question comes up.

Q. By legislation you want progress. At the rate at which you suggest it will take at least 150 years for us to have the age fixed at the ideal figure namely 16. What intervals would you fix?

A. Legislation should be in accord with the people's views which might be ascertained after some social propaganda is done amongst them.

Q. This Committee has been sent out to ascertain public opinion. How far does the public really want these measures?

A. Public opinion is not for these measures at present.

Q. Are you not really aware that it is only a portion of the public that does not want these laws?

A. I should think it is a large portion.

Q. With whom you have radically differed by your conduct?

A. Yes.

Mr. Kadri: Do you realise that in many cases death does not result, but the girl becomes a wreck for life. To prevent such cases do you not think that there should be some severe punishment?

A. The present law can cover such cases, though the proof may be difficult. It may come under hurt or grievous hurt. If it is not a very serious thing one has to overlook it. Therefore the question would be to what extent the hurt had been done.

Q. Would you agree to the Age of Consent being raised to 14?

A. As I have already stated I maintain that these tit-bit amendments should be discouraged.

Q. Would you raise it to 15?

A. I have no objection provided your legislature is prepared to do it.

Mr. Kanhaiya Lal: You mentioned the case of a girl of 13 suffering from severe injuries and dying as a result of the injuries. In view of such cases do you think that if the age is fixed at 13 or 14 it would adequately protect the girls and their progeny?

A. Everything depends upon whether the girl is developed or not; whether from the medical point of view the consummation should have been objectionable.

Q. Do you think that 13 or 14 would sufficiently protect the girls from injury?

A. Generally speaking, after puberty there is not much difficulty.

Q. Would you be surprised if you are told that the mortality amongst girls between the ages of 10 and 20 in India is double that of males?

A. I won't be surprised.

Q. Would you attribute that to early maternity?

A. Yes; to a very large extent.

Q. If this high percentage is due to early maternity, is it not desirable to reduce or minimise it?

A. Yes; if it is possible.

Q. If you further find from statistics that the weight of babies born of girls of a lower age is much lower than the weight of babies born of a higher age, would you be surprised?

A. I do not know much about that. But if that state of things exists, some steps should be taken in that direction.

Q. We find that infant mortality in India is 25 per cent. and in Ahmedabad it is 40 per cent. Do you think that this also among other things is due to early maternity?

A. Early maternity is partly responsible.

Q. Does it not call for a remedy?

A. Yes.

Q. Do you think that social reform or social education will effect the object in view within a short time?

A. That depends upon the efforts made.

Q. What is your suggestion to attain the object in view, considering that the country is very largely uneducated and the masses have not felt the impact of education?

A. I think time will solve the question.

Q. Do you think that we can achieve our object without legislation?

A. We must first prepare the ground for legislation to follow.

Q. You have said that this state of things calls for a remedy.

A. Partly only.

Q. Even when the state of things calls partly for a remedy would you leave that to education?

A. Where State interference is inevitable, it must be resorted to. I welcome a marriage law.

Q. I am speaking of the Age of Consent. If consummation is not postponed, shall we be able to remedy the evils?

A. If you raise the age of marriage that will substantially solve the other questions.

Q. Supposing there is no marriage law owing to the opposition from different quarters, in that case as the next best thing would you have the Age of Consent?

A. I would have it, after changing public opinion as far as possible. There is already one enactment. To advance it further we should take public opinion and then proceed.

Q. Do you think that there is a great demand for a further advance?

A. Except from the educated classes I do not think.

Q. Do you think that the opinion of the educated classes should be ignored?

A. All I say is that the opinion should be cultivated for the whole of India.

Q. If there is such a general opinion would you have an increase in the Age of Consent?

A. Then it must be given effect to at once.

Q. Do you think that nobody below the rank of a Deputy Superintendent should make enquiries?

A. Deputy Superintendent, or Inspector. I do not want constables in such matters, because we would then be touching the sanctity of the house.

Q. Your idea is that marital cases should be made cognisable. Would you make the cases compoundable with the sanction of the court?

A. In extreme cases it may be possible.

Q. Would you further recommend a preliminary enquiry before the prosecution is started?

A. If it is on a complaint the magistrate may use his discretion. If it is sent by the Police it is unnecessary.

Q. In marital cases would you further recommend that such cases may be sent for disposal to a matrimonial court consisting of a magistrate and two non-officials or entirely of non-officials so that the trial of the case might be expedited and greater confidence might be inspired in the public?

A. I have not lost confidence in officials. But I do think that if a separate court is established that would be helpful. I would prefer that in the disposal of these cases an Indian magistrate is there.

Q. In that case would you like a mixed tribunal?

A. It should be mixed. Otherwise it would be something like an Honorary Magistrates' Court.

Q. This tribunal will be there only for the purpose of trying marital cases?

A. Yes.

Q. Supposing we have a marriage law, would it not be desirable in the public interest to have a record kept of marriages and to require the parties to send a report to a prescribed authority?

A. I would welcome it.

Q. Can you tell us who may be the prescribed authority to receive these reports and maintain registers of marriages.

A. It is a question of detail. Municipalities and local boards are not found everywhere. Other reliable agencies will have to be resorted to. I would leave the details to be considered by the proper authority. Objections may be invited on a scheme which might be published for public criticism.

Annexure to Diwan Bahadur MALJI'S Evidence.

Judgment.

The accused is charged under Section 304A, Indian Penal Code, with causing the death of his wife Somi by a rash and negligent act, *viz.*, by having sexual intercourse with her notwithstanding that her age and development were such as to warn him that the act would be attended with danger to her and which sexual intercourse by the rupture of her genital organ due to the force used caused her death. He is also alternatively charged under Section 338, Indian Penal Code, with causing grievous hurt to her by doing an act so rashly and negligently as to endanger her life.

The charge arises out of the following facts. The accused is a fully developed and well-built male adult of about 30 years of age. He married the deceased Somi nine days before her death when she was barely 13. On the eighth day after the marriage Somi was sent for the first time to her future home according to custom. She was to have returned next day. The accused had sexual intercourse with her that night. She died the following morning between 10 and 11. According to the prosecution, she was immature and unfit for sexual intercourse, and her death was due to hæmorrhage from a rupture of vagina caused by violent sexual intercourse.

The proved as well as admitted facts of the case are that as the date of her death Somi was within two days of completing her thirteenth years that she was married to the accused nine days before her death and was sent to his house on the eighth day after the marriage to spend the day and night there according to the custom. That the accused had connection with her that night for the first time, that she died next morning between 10 and 11.

The first question is whether the accused had caused Somi's death, or at any rate had caused grievous hurt to her. The body was not internally examined on the motion of the accused the local Magistrate had countermanded such examination. The external examination, however, showed, according to the evidence of the Senior Sub-Assistant Surgeon a distinct tear at the lower part of the vagina, which was $1'' \times \frac{1}{2}''$ in dimensions. The vagina was much dilated, and there were many thick clots of blood in it. Labia majora and minora were found swollen. The urethra was inflamed. Dried blood was found smeared over both the thighs. In the opinion of the Doctor, the death appeared to be the result of extensive hæmorrhage from the rupture of the vagina caused by violent sexual intercourse. It was suggested to him that the hæmorrhage might be due to excessive menstrual discharge, but he declined to countenance any such theory in the face of rupture which obviously accounted for the hæmorrhage. According to him the injuries that he noticed were by themselves quite sufficient to cause death, and an internal examination might have disclosed an additional but not an independent cause of death. There can thus be no doubt on the evidence that the accused had caused Somi's death, or at any rate caused grievous hurt to her.

The next question to consider is whether Somi was immature and unfit for sexual intercourse with the accused. Now I think it will be conceded by any reasonable mind that her age was not such that a person of ordinary sense would take it for granted that she had reached maturity and could suffer no serious harm from sexual intercourse. Rather, it was such that a person who consulted her welfare would have serious doubts about her being able to stand sexual intercourse without serious harm, and would refrain from such intercourse, at any rate of a violent character. Age is moreover only one factor in the consideration of the question whether the girl had attained maturity and was fit for sexual intercourse with a fully developed and fairly strong man of thirty. According to Sub-Assistant Surgeon, her genital organ was in a rudimentary stage of development, and was not sufficiently developed for sexual intercourse. The pubic hair had just begun its appearance and showed that maturity had commenced but had not been attained. The breasts were only slightly developed. The Doctor was

inclined to think that the deceased had not commenced menstruating, but was unable to give any positive opinion on the point in the absence of internal examination. From the evidence of the deceased's mother, however, it appears that the deceased menstruated twice before her death. Menstruation is no doubt one of the signs of puberty but it is by no means an infallible sign as in many cases it appears before maturity, and in rare cases as early as the age of 9 or 10. (See *Legons on Medical Jurisprudence*, 1889, edition, pp. 313 and 314). From the circumstances that the deceased had commenced menstruating the accused may possibly have been led to think that she was fit for sexual intercourse. At the same time she could not but have been struck by the great disparity between himself and her and her extreme youth and undeveloped physical condition must necessarily have warned him that the intercourse, if violent, was likely to do her serious injury. Having regard to the size and undeveloped condition of the deceased's vagina and the size of the accused's organ, the Doctor says that the accused must have used much force, it is impossible to think that the deceased could have borne the excruciating pain that she must necessarily have suffered without crying out, and it may safely be concluded that the accused must nevertheless have persisted in the act regardless of the pain he was inflicting. It is urged that there is no direct evidence that the deceased had cried out. True: but she and the accused were sleeping by themselves in a room on the upper storey, while the only other inmates of the house were the accused's parents who were sleeping in a room on the lower floor below the first mentioned room. Even assuming that her cries were likely to be heard by accused's parents one of them has since died and the other is not likely to give evidence against the accused. The defence next rely upon the evidence of the deceased's mother who states that she had sent the deceased to her husband believing that she was old enough to cohabit with him, and that amongst their people girls are usually sent to live with their husbands at the age of 13 to 14. In saying this however, she is only trying to justify her own conduct by taking shelter under a pernicious practice. I at once concede that if the law is to be administered in consequence with the sentiments of these people on the subject, the accused must be held to be not guilty. I have, however, to administer it without being influenced by any such extraneous considerations and so administering it I find it impossible to avoid the conclusion that the accused in this case was guilty of culpable rashness or at any rate negligence in having had sexual intercourse of a violent character with this tender wife. "Rashness" and "heedlessness" or "negligence" have been defined by Sir William Markby in his *elements of Law* (4th Edition, p. 119) in these words:

"When a person does an act advertent to consequences which upon insufficient grounds, he does not expect to follow he is said to be rash and his conduct is called rashness."

"When a person does an act without advertent to the consequences, and he has failed to do so because he has not used due care and circumspection, he is said to be heedless, and his conduct is called heedlessness."

(See also 7 M. H. C. R. 119.)

In this case it seems to me that the likelihood of serious danger to his child-wife from a sexual intercourse of a violent character could not have been wholly absent from the accused's mind. But even if it was, it could only have been because he had not used due care and circumspection. Or to use the words of Wilson, J. in *Queen Empress vs. Hurree Mohun* (I. L. R. 18, Cal. 49, at p. 66), the accused's act was of such a character as to indicate either a reckless indifference to the welfare of the girl, or a want of reasonable consideration about what the accused was doing: it was an act which "if he had had a reasonable thought as to the act he contemplated doing, he would have abstained from doing."

It has been urged that there is no similarity whatever between the facts of the present case and those of the case just referred to. I concede that

this case is very much less flagrant than the Calcutta case, and the case has also not been worked up with the same care and thoroughness. The difference in the two cases however is one only of degree. To attribute the fatal result in this case to pure mischance or accident, as has been done by the learned pleader for the defence, is virtually to deny the law of causation. For assuredly as effect follow cause, the poor girl's death was due to the violent sexual intercourse that the accused had with her. The result as well as everything else in the case indicate that such an intercourse between them was likely to be attended with dangerous consequences to her. If the accused did not foresee any such consequences, it could only be because he was heartless and callous, for any man of average sense who had a reasonable regard for the welfare of the girl committed to his care would have done so as the danger was patent. Nor can the accused avoid his responsibility to the law by taking shelter under the pernicious practice which countenances early consummation.

For these reasons, I differ from the assessors in finding the accused guilty.

I have given anxious consideration to the question of sentence. Having regard to all the circumstances of the case, I would probably have acceded to the prayer of the learned pleader for the defence and let the accused off with fine were it not that in case like this I consider it of primary importance that the punishment should be such as to be a warning to others. I must therefore sentence the accused to imprisonment. At the same time I devoutly hope that the present case will come to the notice of Government, and the Age of the Consent under Section 375, Indian Penal Code, will ere long be raised so as to make cases like this, and other more numerous ones in which the results are not so immediately fatal, impossible.

ORDER.—The accused is convicted of an offence punishable either under Section 304A or under Section 338, Indian Penal Code, and is sentenced to simple imprisonment for six weeks.

P. J. TALYARKHAN,

Jg. Sessions Judge.

21-4-1913.

Oral Evidence of Mr. N. D. MEHTA, Ahmedabad.

(Ahmedabad, 19th October, 1928.)

Chairman: How long ago you retired as Deputy Collector?

A. Only two years and I retired as Deputy Municipal Commissioner recently.

Q. During most of the period your services were in Gujarat?

A. Yes, and also in Thana. Although it is in Northern Division, it is not in Gujarat.

Q. What community you belong to?

A. Sathodru Nagar community.

Q. In your community what is the age of marriage of girls?

A. Usually 11 or 12.

Q. And consummation?

A. That depends on the community. Among the high caste people the consummation takes place at about 15 or 16.

Q. Let us know the high castes in which consummation takes place at a late age?

A. Among Nagars, Brahm Kashatrias, Brahmans of higher type as Kherawals consummation takes place at about 15 or 16.

Q. That is necessarily after puberty?

A. Yes.

Q. What communities would you say have an earlier marriage say at 13 or 14?

A. I know Sonis, Kombis, Karwa Patidars. In the rural areas there is early marriage but in the city there is a forward movement with regard to these castes also. They nearly follow the high castes principles.

Q. So far as cities are concerned do you take the Leva Patidars with the higher castes and so far as the villages are concerned you will take them along with the rest?

A. Yes.

Q. Those communities amongst whom marriages take place at a lower age what proportion do you think they are of the entire population and what proportion is the higher class?

A. Practically 75 per cent. marry their girls at a later age.

Q. Those put together how much do they form of the total population of Ahmedabad?

A. I think very small, 3 per cent. or 4 per cent. The total population is 2 lacs and 40 thousands.

Q. Do you think all these classes are more advanced in education?

A. Yes.

Q. Do the other classes among whom marriages take place at a lower age form the large majority?

A. Yes.

Q. When do you think consummation takes place among those who marry at a lower age?

A. I cannot say definitely but as a rule it is soon after puberty?

Q. When is puberty attained amongst those classes?

A. At 13. Those who practically go out for working consummation takes place after puberty.

Q. Your working population is a very large one?

A. Yes, it is floating population.

Q. Would it be right to presume that among these at any rate consummation takes place somewhere between 13 and 14?

A. I believe so.

Q. At what age a girl can safely become a mother without detriment to her health or to her progeny?

A. I think 18.

Q. Would you also call that the age of intelligent consent?

A. I think the majority age is reached in the civil law when she is able to take care of her property. Although girls are fairly intelligent at 16 but I can put it at 18 when she can understand the responsibility of maternity.

Q. Has the age of girls for marriage been raised recently?

A. Yes, I think it is on account of growth of education and public opinion all round.

Q. You think the masses are being affected by the advanced age in the higher classes?

A. The mode of living of the higher classes is better and the lower classes try to imitate them in all matters.

Q. Have there been any widow remarriages among Nagar Brahmins?

A. They are not permissible.

Q. Have any taken place?

A. I have come across certain cases among Oudhi Brahmins but in the Brahm Kashatrias it is not permissible.

Q. Also among the Patidars—the higher classes—there are no remarriages?

A. Patidars are in 12 villages of Kheri. There is no widow remarriage among them; they follow the Brahmanic custom strictly.

Q. Barring this 4 per cent. society you say there is a very large proportion of people who marry their girls early and consummation takes place between 13 and 14. Among these classes are there any classes who have any remarriages?

A. Among Kumbis it is permissible but now the tendency is to follow the Brahmanic custom.

Q. So barring this 4 per cent. practically you say this remarriage is permissible?

A. Yes. It is also permissible among the low strata but the rest follow the Brahmanic custom.

Q. If it is not prohibited by their caste rules will they follow the Brahmanic customs?

A. Yes.

Q. Do you observe any difference between the girls' mothers who are married at 13 or 14 and consummation follows and girls who become mothers at a late age? Have you observed any difference between the children of both?

A. Decidedly the girls who marry late their children are healthier.

Q. Take the Brahman and Kashatriya classes. Their girls are married at 16 or 17. Can you say their progeny is better and their women suffer less than other castes who marry their girls at a lower age?

A. I think if the girls are themselves healthy their children are also healthy. Physiologically I think they are better mothers.

Q. Which law would you prefer—raising the Age of Consent or fixing the minimum age of marriage? Would you prefer any legislation on the subject?

A. Individually I should like to have the Age of Consent split up into two parts—one relating to marital relations and the other relating to non-marital relations. I think the opposition even of the orthodox class will disappear in regard to non-marital. The other should be carried over to the Sections of the Indian Penal Code dealing with marriage. The word rape itself is a very bad one and there is social stigma attached to it. If there is cohabitation with husband it should be dealt with in a separate chapter. Then the method of trial should be separated. The punishment may be kept 2 years but the method of trial and the method of investigation should be of a different type and the category should be different. For example enticing away once a married wife by the husband should be treated lightly. I do not talk of actual sexual intercourse but if the girl is taken away from her parent's house within her 13th or 14th year a lenient form of punishment of first offender ought to be exercised because marriage is inseparable among the Hindus. Higher form of punishment in such petty offences would ruin the girl instead of protecting her and if the husband is so severely treated for taking the girl from her parent's house it would be very hard. Even if there is consummation I think there is something from social point of view to be considered.

Q. As between the Age of Consent and the law fixing minimum age for marriages which would you like better or would you like both?

A. I think there should be changes in both. If Hindus follow Vedic laws they lay down that marriages should not be before 16 but Smriti laws colour our age of marriage. Hindu texts are torn into two forms. One where post puberty marriages are laid down in Sutras it is laid down that in olden times girls had sacred thread ceremony as boys have when there was *sama vartha*. That period practically has disappeared. Those texts were set aside and Manu came in.

Q. Would you be able to give us those texts?

A. Yes. *Sama varṇa* took place before marriage.

Q. If you have this law of marriage what age would you suggest for marriage?

A. According to the present customs I think 13 or 14 would be a proper thing and for boys it should be 18.

Q. What would you fix as the Age of Consent within marriage?

A. Not less than 16, and 18 outside marriage. Girls ought to be protected when they have to move about all round especially in factory area. In old days we had social restrictions and girls did not come out. Now they require a further protection.

Q. Within your experience of the last 30 years have you known of any husband being severely punished for any marital offence?

A. No; these offences do not reach the court.

Q. Do you know of any instances in which a man has been severely handled?

A. The social customs are so bad that these cases do not come to light. The greatest offenders are those husbands who marry a second or a third wife. It is a pious law which is virtually broken.

Q. Have you known of any case in which husband within marital rights has been dealt with severely by courts?

A. Such cases practically do not come to courts.

Q. Do you think the law of the Age of Consent has been effective?

A. No.

Q. Do you suggest any measures to make it effective?

A. I think the girls should be under the lawful custody of parents and relations up to the age of 16. I think by law the guardianship should be retained up to that age.

Q. Do you think that would cure matters?

A. Manu says that after marriage a girl is under the legal protection of the husband. I would change it. Even a married girl should remain under the lawful guardianship of the parent or father as against the husband. As regards outside marital cases the husband may have lawful right.

Mrs. Beadon: Can you tell us of any cases in which there has been any injury to the girl on account of early marriage and early consummation?

A. As a matter of fact this is a proper thing which ought to be enquired into by medical men but as a layman we hear lot of reports.

Q. Have you in your own experience noticed a girl who married at 12 and became a mother at 13 or 14? Have such cases resulted in injury to her health or to her children.

A. In one case I have seen that a poor girl was operated upon for delivery.

Q. Was that a young girl?

A. I think she was between 14 and 16?

Q. You know one or two cases in which girls of tender ages had very difficult deliveries?

A. Yes. Once it was not only a difficult delivery at the first time but at the second and third time also.

Mrs. Brijlal Nehru: Do you think that propaganda work of the social reformers is enough to stop early marriages?

A. I think the social tendency is to raise the marriageable age.

Q. But do you think that it is enough or does it require an outside impetus?

A. I think it requires outside impetus.

Q. In Baroda for instance the marriage law was usually violated by performing the ceremony outside the Baroda territory and sometimes by paying the fine?

A. If there is a uniform law both in British India and Indian States it would be very desirable otherwise it would be violated and avoided.

Q. If punishment is more than a fine?

A. I think fine is a proper form of punishment.

Q. You have suggested certain changes in the procedure of trial of cases. Do you think these changes will bring more cases to light?

A. I think people will be bold enough to make complaints. Now investigation is handed over to Sub-Inspectors of Police drawing Rs. 100. People would not go there to file complaints in such delicate matters, but if a rule is made that no court shall take cognizance of such offences unless there is a sanction of the District Magistrate and unless the information of this cognizable offence has reached before an officer of the rank of Assistant Superintendent of Police or Superintendent of Police, I think people would at least like to go to them and file complaints.

Q. Have you so far experienced such desire among the people to make complaints with regard to these offences and have you found that they have not done it because of the present system of law?

A. People are not aware of these things.

Q. These offences do not only take place among the lower classes, but they do take place among the middle classes and upper classes also. Have you seen among them a desire to bring such cases to light if the law were different to what it is and if the law were in accordance with what you have suggested?

A. I cannot say definitely but people would be reluctant to go to the court anyhow and they will go only in extreme cases when there is a definite injury to the girl, otherwise they will hush them up.

Q. Are there any keen social reformers who could be entrusted with a work like this and who could be made into a society recognised by Government?

A. Yes, if they are authorised to investigate this matter properly in a social manner and if the complaints are filed by the aggrieved parties themselves then it may be effective.

Q. Do you think aggrieved parties would ever come forward?

A. Women who are taking an interest in social affairs if they go about into various areas and if they find that a particular girl has been harmed this woman would persuade the mother to come forward and to lodge information before them and then she would be a proper medium for filing a complaint before the police. Women can do a lot in these matters and if confidence is created among the mothers they will come forward otherwise persons actually aggrieved would not come forward.

Q. Do you think there are a sufficient number of public spirited women who will come forward in all areas to take up this work?

A. Not in all areas but in cities I think ladies will come forward.

Q. Then you have suggested a change in punishment that boys should be given a punishment of first offenders or till the rising of the court. Instead of this would you like the idea of taking bonds from the parents of the girl or the boy to keep the boy and the girl separate in different houses?

A. Unless the girl has attained the age of 16 or 17 she shall not remain with the husband but the parents shall take charge of her. If such a condition is laid down at the time of conviction then the husband may be let off.

Q. In case the bond is broken a second time what would you do?

A. There should be punishment in the form of penalty.

Q. Would you have the confiscation of the bond?

A. The accused should be called upon to suffer imprisonment.

Q. Is there a feeling generally among men and women against men who marry for the second or third time a small girl as their wife?

A. There is a social stigma all round.

Q. If it is so why do they get girls so easily?

A. Because the caste in which this custom occurs there even in the lifetime of the first wife the husband can obtain a second wife.

Q. What is that caste?

A. Oudieh Brahmans. There are still men who have two or three wives living.

Q. Is that the custom in your community?

A. We cannot even get a bride.

Q. Do widowers marry in your community?

A. Yes, but they get only up to the age of 40; after 40 they cannot get.

Q. In other communities about which you have said that men marry two or three times, is the number of women greater than that of men?

A. I cannot say definitely but unless there is a large number of girls such condition would not prevail.

Mr. Bhargava: You have pointed out that in some castes there is a practice to the effect that the widower gets a girl of 13 or 14 as his wife. Is the evil so prevalent that it would be necessary to prevent it by legislation?

A. If the legislature laid down a marriageable age for girls that is sufficient.

Q. Supposing the marriage of men over 40 with a girl below 16 is prohibited by law?

A. I think it will be unworkable.

Q. What should be the proper age for second or third marriage? Should they be able to marry with a girl above 16?

A. I have not thought over the matter.

Q. You have pointed out that in your opinion instead of inserting 376A if you have a new Section in the chapter relating to marriages, there will be less dissatisfaction?

A. I think this Section 376A contemplated to be inserted ought to go in the Chapter beginning with 493.

Q. May I know your reasons?

A. In that chapter you will find that all the offences mentioned beginning with 493 onwards are practically offences against the husband. This will be an offence against the wife.

A. The heading should be 'offences relating to marriage'.

Q. There is no instance in these Sections in which the husband is an accused person?

A. The scope of the chapter should be enlarged.

Q. Why do you think so?

A. To meet the Sanatnist. If marriage is held to be valid then of course the treatment should be under that chapter. It is an offence against marriage.

Q. I suggest for your consideration that at present this offence is regarded as an offence against the person just as Section 323. So far as Section 375 or even 376A can be regarded as an offence against the person it is all right. The principle is that person is absolutely inviolable in the eye of the law and husband is not excepted.

A. The point is this that if the husband beats his wife that is a form of injury but of a different category and the sexual act is a different thing. Of course there may be physical injury but the intention is different.

Q. Supposing this offence is placed there, how will there be less dissatisfaction among the people?

A. In some cases there will be first offender's treatment.

Q. Even now under the present law Section 562 will apply to these cases?

A. In your present law in offences punishable with 2 years and down this first offender's treatment is permitted. Would you apply that to all marital cases?

Q. Yes, but that depends on the nature of the offence. You want to take this offence under 376A only to that chapter?

A. Yes, in all offences committed within marriage.

Q. Would you like even to treat a husband who cohabits with a girl below 12 under that Section?

A. With reference to petty offence there would be that treatment.

Q. With regard to offences relating to marriage you have said you are in favour of inflicting fine only so far as parents are concerned. At present in Sarda's Bill the difference between the classes of the offenders is that if a mother is an accused person then she can only be given a fine and if the father is an offender then imprisonment can also be given. One witness from Baroda told us that the infliction of fine only has not proved very successful in preventing such marriages. Is the fine not bound to be regarded as a part of the marriage expenses?

A. That depends on the attitude of the magistrate. If he finds that the man is a rich one a heavy fine would set him right.

Q. Would you not like imprisonment of one month?

A. I would give discretion to the magistrate.

Q. You have suggested that in marital cases the district magistrate should be armed with power to sanction proceedings against an accused. There are two courses open—one in which the District Magistrate may be armed with power to sanction prosecution or to initiate prosecutions, the other is that every person should be allowed to report and complain and the Magistrate may hold preliminary enquiry before calling the accused. Which would you prefer?

A. There is one Section in the Criminal Procedure Code that no court shall take cognizance of offences mentioned in this Section unless the aggrieved party makes the complaint. If this particular offence falls under that Section it will be sufficient protection.

Q. You want that the aggrieved party should be the only person to complain or should social reform organizations have that power?

A. Yes, and that the investigation shall not be by an individual below the rank of Assistant Superintendent of Police.

Q. Then you do not prefer that prosecution should be sanctioned by District Magistrate?

A. The sanction of the District Magistrate may be taken.

Q. Would you like a first class magistrate in District Magistrate's place?

A. District Magistrate or a Sub-divisional Magistrate because they are both judicial and executive. In the matter of initiation of criminal proceedings the District Magistrate or Sub-divisional Magistrate should be the proper authority. Sub-divisional Magistrate may be a second class magistrate but the trial may be in the hands of a first class magistrate. The initiation of proceedings should be sanctioned by a Sub-divisional Magistrate or District Magistrate otherwise there will be an objection in the court if a particular first class magistrate sanctions the proceedings because he will be debarred while the District Magistrate will only transfer the proceedings.

Mr. Mitra: You are for fixing a marriage law in India?

A. I am not necessarily for a separate marriage law. I say marriageable age should be 13 or 14.

Q. If there is a law for marriage and a law for consummation which would you prefer?

A. I would prefer the Age of Consent law.

Q. Is it not an admitted fact that there are very few cases as regards infringement of consent law so far as marital cases are concerned? That was

the reason why many witnesses suggested that it is far better to have a marriage law so far as marital cases are concerned?

A. I would rather like to have a uniform marriage law. If you can make any law applicable to all the territories it will have some meaning otherwise it will be avoided.

Q. I would like to understand about the religious texts. Is there any objection from the religious point of view?

A. I am not a Hindu Jurist but I can say that there are three ages of the development of Hindu law. Oldest Hindu law as recognised by the Vedic Rishis themselves indicate as a matter of fact post puberty marriage (the witness cited the authority). These things cannot be put in the mouth of the girl if you read the text properly. Then come Harit Sutras. It is definitely laid down that women are not to be treated as Shudars because women ought to be purified by the Vedic text just as it is done in the case of boys at the time of sacred thread ceremony. Sacred thread ceremony was applicable to both boys and girls. Later on the sacred thread ceremony is substituted by *virah* for girls. Then it is that those girls who want to study just like boys this *sanskara* should be performed in their case. (The witness cited authorities and explained them.) From the shastras we find that early marriage was not in vogue.

Q. Then it would be correct to say that according to Hindu Shastras pre-puberty marriage or consummation is enjoined nowhere?

A. I will hesitate to express that opinion. This was the opinion as far as I understand with regard to Vedic literature.

Q. There has been a suggestion that in marital cases where no actual physical violence has resulted the punishment should be confined to fine only. Then there is likelihood of cases coming to court? What do you say?

A. If you have a security bond it will be very good.

Q. As regards procedure of trial do you suggest that in marital cases there should be camera trial or there should be some such law as it is in England about divorce cases that newspapers should not publish the details?

A. I would prefer it.

Mr. Ramaswami Mudaliyar: You say that the guardians or parents of the girl should be punished. Would you penalise any parent who sends away the girl to her husband's house before a prescribed age?

A. Yes. In that case he would be an abettor of the crime. If the offence is that consummation shall not take place before 16 and whosoever commits and whosoever abets will be punished. That is discouragement.

Q. Supposing parents of the girl send her to the husband's house but not with the intention that consummation should take place?

A. In that case it would be very difficult to prove.

Q. It would not amount to abetments. Would you penalise that?

A. I would make it a separate offence.

Q. Would you similarly penalise the parents of the boy?

A. The whole trend of the law is to protect the girls.

Q. Then would you go further and penalise the parties who are responsible for consummation?

A. If husband is made responsible.

Q. It will be very difficult for the parents to control the husband and the girl is under the protection of the parents.

A. With regard to the boy it will be very difficult.

Q. The boy is not under the control of his parents?

A. In this particular matter I should like that the parents of the girl should be penalised if they send the girl to the husband.

Mr. Mudaliyar: Normally speaking the boy is about 15 or 16 when he is married. Is it not?

A. Not necessarily.

Q. Therefore I say normally speaking. And in many cases is not consummation brought about at the instance of the parents of both the parties?

A. In that case you can make both responsible. If you make that offence penal with reference to the girl's parents I think it would be consistent, if the boy is a minor, to make the father also responsible.

Q. You said something about the husband being punished if he takes away the girl and so on. What do you mean by that?

A. I said if the husband takes away a girl of less than 16 from the parental house that should be an offence by itself.

Q. You said in marital cases the complainant should be the aggrieved party, that is to say, the girl or the adult relations of the girl. Do you think a woman would ever come forward to make a complaint?

A. Provided social workers help practically and mould opinion and obtain confidence, otherwise not.

Q. Obtain whose confidence?

A. Of those mothers who want to make a complaint. These things would come to the notice of the mothers rather than to the notice of the fathers. If the mothers are taken in confidence by the social workers then only they will be able to lodge information, otherwise not.

Q. So the success of the social workers depends upon the willingness of the mothers to complain.

A. Otherwise the prosecution will fail and it will be a waste of time and money.

Q. You said you would advocate such a legislation only if there was the same legislation in the States also. So far as Baroda State is concerned it has raised the age of marriage to 14. Would you therefore like that so far as this part of the country is concerned, for the sake of uniformity at least, the age may be raised to 14?

A. We have to take into consideration almost all the territories because the legislation will be for the whole of India.

Q. In that case the law should be so amended as it would be workable in all the Native States and as there is no legislation in many States and British India would you ask Baroda also to have no law and repeal the law they have passed?

A. If there is no feeling to go upto that limit, I don't mind that.

Q. That is to say you would have no legislation.

A. My position is that until practically every Indian State has made legislation with reference to the marriageable age British India ought not to have a marriage law. I think it would not be workable.

Q. But if there is an extradition clause your argument that the law will be evaded by going to a State would disappear. At present the Baroda Government is in negotiation with the British Government with reference to extradition proceedings in regard to the law of Prevention of Child Marriage. If a person who breaks the law can be extradited that argument will not apply. Then there is no question of uniformity. British India will have its own law and the States their own law.

A. I would not object if such an arrangement could be made.

Q. You suggest that this law should be put into another chapter. Is it because the bulk of the people on whose behalf you are speaking will like that or is it merely a juridical notion that it is not in consonance with the best principles of law?

A. There is a sentiment that it should be in a separate chapter. They regard it as a very delicate matter. This chapter relates to the offences against the person of individuals.

Q. Then may it be removed from the Indian Penal Code altogether and may there be a separate Act for that?

A. It will be better.

Mr. Kanhaiya Lal: You have recommended that sanction should be obtained either from the District Magistrate or from the Sub-divisional Magistrate before a prosecution is initiated.

A. Provided the other course is not accepted, namely that the case should be cognizable only when the complaint is made by the aggrieved party. If the complaint is filed by a duly authorised party previous sanction should be dispensed with. There is no necessity for the previous sanction if the complaint is made by the girl herself or her parents or her adult relations.

Q. Would you recommend in that case there should be a preliminary enquiry under Section 202, Criminal Procedure Code, before summons are issued and prosecution is started to eliminate false and frivolous complaints?

A. The magistrate can order an investigation.

Q. You say the offence should be cognizable only when the complaint is made by the aggrieved party. The difficulty is that the girl or her guardians will be very unwilling to make a complaint.

A. That is why I say that the social workers should co-operate.

Q. In other words you do not insist on the right of complaint being given to the girl or her parents only. You are willing to give that right to social workers also, and to recognise responsible bodies, and you would not require previous sanction to be obtained in those cases.

A. It is a direct complaint and the court can take cognizance.

Q. I should like to know whether you would make the offence compoundable?

A. With this security bond the offence can be made compoundable.

Q. With or without the sanction of the court?

A. Without the sanction of the court. The bond shall be filed in the court which may be enforced.

Q. Would you be in favour of requiring all these marital cases to be transferred to a matrimonial court consisting of a magistrate and one or two non-officials so as to inspire greater public confidence and expedite the disposal of these marital cases?

A. If lady magistrates could be had, I should like to entrust this work to ladies rather than private judges.

Q. Don't you realise that in India it is not possible to obtain lady magistrates of the type required?

A. I would prefer that.

Q. If ladies are not possible would you like that these trials should be held before ordinary courts or before courts specially constituted for the trial of matrimonial cases?

A. It is very difficult, but if they can be established it would be preferable.

Q. You have said you are in favour of having a law fixing the age of marriage and a law fixing the Age of Consent. Suppose we have both these legislations, would you as an auxiliary to these legislations, like to have a system of registration of marriages or reports of all marriages being made to a prescribed authority a record giving the names of the marrying parties and their ages.

A. I think if the registration of births is brought up-to-date and if the name of the child is entered you can trace things there. It is really very difficult to trace the age of a particular individual.

Q. In view of the difficulty of tracing the age in the birth registers would it not be better to have a more recent record, that is, only of marriages, giving the names of the marrying parties and their ages in all urban and rural areas?

A. We might have registry of marriages if you like for the purpose of recording all marriages.

Q. Would it be helpful for determining the age?

A. It would be helpful if the parties have to declare the actual date of birth. Otherwise it would be very difficult to find the correct age from the register.

Q. Would you recommend that in these returns the date of birth should also be entered and that the reporting party should be asked to verify that the entries made therein are correct?

A. Then a correct statement will be made.

Q. Would you recommend that these returns should be maintained by the same staff, that is, now maintaining the registers of births and deaths?

A. In the rural areas registration of births is in the hands of patels and where patels are illiterate the Talati is the sole master. In the cities we have got a regular register but in the rural areas it is very defective.

Q. On whom would you place the obligation to keep these registers then?

A. On the revenue authority like the Mamlatdar in the rural areas and the municipality in the city areas.

Chairman: You were saying that there must be a general legislation for the whole of India; otherwise the law may be evaded. In view of Section 3 of the Criminal Procedure Code, it will be possible to punish the man even if he goes to some State.

A. Yes.

Written Statement, dated the 11th August 1928, of Mr. DAHYABHAI P. DERASARI, Bar.-at-Law, Ahmedabad.

1—3. No reply.

4. The tendency is towards alternative No. 3, i.e., parents try to put off marriage to 13. After marriage wise parents think that consummation of marriage cannot be controlled or prevented when the husband is not under the control of adult parents or relations or when the husband has contracted marriage with the girl wife after the death of his previous wife. Besides according to the civil law the custodian and the guardian of the girl wife is the husband and not the parents. They are even held criminally liable if they removed the girl from the custody of the husband without his permission. In old fabric Hindu Society, although marriage used to take place before the girl attained puberty, there were social impediments to consummation of marriage before puberty inasmuch as parents used to keep a watch over the young couple and formally arranged for the first consummation night. Thus marriage without consummation was no evil then. But this custom has died out. Under these circumstances the parents prefer to resort to No. 3 instead of No. 1.

5. Usually 12 to 13 years. Among girls working in industrial centres, menses appear at a comparatively earlier period on account of heated atmosphere in which girls are obliged to work, and also on account of the indiscriminate mingling of boys and girls in factory premises.

6. Consummation takes place soon after puberty as a general rule. Cases of consummation before 13 do occur in the case of foolish adult husbands among some working classes, e.g., Sonis, Lulars, Sutars and others.

7. In old days religious injunctions carried much weight. Now nobody thinks of the texts relating to the age of marriage or to the consummation. The texts of Smritis support the popular marriage of girls before puberty, but the texts do not countenance consummation before puberty. On the contrary, the Ayurvedic texts which are accepted even by the Dharma Sutrakars put the consummation period at 16 in the case of girls and 25 in the case of males.

8. Garbhadhan ceremony has disappeared now-a-days. The symbolic part is played at the time of Simant ceremony. Wherever it is performed, it is done after the girl has attained puberty.

9. No. 16 years for girls is a fair index of puberty for consummation purposes although 18 would be ideally perfect.

10. 18 years. Before that period even though there is puberty, the girl is not able to realise consequences of her consent partly on account of her limited education and limited experience of the world.

11. Nil.

12. Yes. It is one of the causes.

13. Yes. It is confined to intellectual classes only.

14. Not among the intellectual classes. Among the lower order and artisan classes, there is a burning desire to see grand children.

15-16. No reply.

17. Yes, these offenders should be separated. I think the opposition to raising the Age of Consent is due to the application of the law of rape within the marriage relation. If this is excluded from it, public opinion will favour the adoption of a higher age limit, say 16 or even 18. In fact it is most desirable to have one age limit for all offences against minor girls who in Indian law, are girls under 18 years of age. There is no meaning in keeping a lower limit of 14 suitable for consent in the case of rape, while 18 in the case of kidnapping and seduction. Consent is a mental and moral act and in judging whether a girl is capable of giving a valid consent, mere physical maturity should not be the main consideration. If girls under 18 are minors incapable of entering into contract relating to property, it is not reasonable to hold that they are capable of giving consent to a far more serious matter which adversely affect their whole life.

18. As regards premature marital sexual offences, the proper remedy lies in abolishing child marriages before puberty, and treating sexual intercourse by a husband with his wife before 14 as a separate offence against marriage rather than against person. In the case of grievous injury, the husband may be tried for "grievous hurt", the definition of which should be amended.

Secondly, if the law of rape is to be retained with reference to marital relations, the offence should be made "compoundable" where no definite injury is proved, or the husband convicted should be treated with leniency, *e.g.*, discharge after due admonition or release with security for future good behaviour as in the case of first offenders (Criminal Procedure Code, Section 562).

The punishment to the husband for rape, when the marriage is indissoluble does not help the poor girl in the least. Such punishment leads to permanent estrangement of feelings, and there is no amicable settlement. The girl is obliged to lead a life of enforced "widowhood" in the life-time of the husband and the consequent immorality.

19. "Illicit married intercourse" should be a separate offence under the chapter relating to offences against marriage, and the punishment should be equal to the punishment of "simple hurt" or "grievous hurt" in proportion to the physical injury caused to the girl. The trial of husbands should be in camera; and prosecution should not be entertained without the sanction of the District Magistrate and without preliminary investigation by an Officer of the Police not below the rank of Deputy or Assistant Superintendent of Police; the girl should be regarded as a competent witness in spite of her tender age; the offence should be made compoundable and the provisions of the Criminal Procedure Code, relating to first offenders should be extended to husbands convicted of the offence of "illicit married intercourse".

20. Yes, the former, *i.e.*, penal legislation fixing a higher age consent for marital cases.

21. On both, strengthening of the penal law as well as on the progress of social reform by means of educational and social propaganda.

**Oral Evidence of Mr. DAHYABHAI P. DERASARI, Bar.-at-Law,
Ahmedabad.**

(Ahmedabad, 19th October, 1928.)

Chairman: You have been a member of the Bar for how many years?

A. Nearly 30 years.

Q. Do you move out in the villages?

A. I am more in touch with city life. When I have to go out in the mofussil for cases I come in contact with villagers also but I have no experience of village life.

Q. Do you think the law raising the Age of Consent to 13 has been effective?

A. I don't think these cases ever come to light.

Q. Do you think a mere raising of the age from 13 onwards would bring these cases to light any more than what they do now?

A. No. I don't think simply by doing that the cases will come out. There must be something else too.

Q. What is that something else?

A. I think we might fix the age of marriage and also the Age of Consent. The age of marriage may be something on the lines of Mr. Sarda's Bill.

Q. In answer to question No. 20 I understand you say that you like fixing the higher Age of Consent?

A. I will modify and say both are necessary.

Q. What age would you fix?

A. 16 for girls and 18 for boys.

Dr. Beadon: Would you give us any instances in which injury might have resulted to the mother as a result of early consummation?

A. I can give you cases which occurred years back. I cannot give anything recent.

Q. Can you give an instance of a widower of an advanced age marrying a girl of 13 or 14?

A. No.

Q. What about the children? Do they suffer? Do you think those children are strong and healthy?

A. The children are weak and undersized. Last year among the goldsmiths I saw a girl working in the street. I was surprised to see that she was putting on something which showed that she had been married. She was only 12 or 13. On enquiry she would not say anything. She felt shy after a few months she conceived. She gave birth to a daughter and three or four months after that she died.

Q. The baby is still alive?

A. It is very weak. I don't think it will be a long-lived child.

Q. We are told that there is a great deal of still birth among the ladies here. Do you think this is due to early motherhood or is it due to unhygienic surroundings?

A. Perhaps, not necessarily.

Q. The mother is generally very young and the father is also a boyish father and there is early motherhood. Would you say it is a very potent cause of still births?

A. I cannot give any definite opinion.

Mrs. Nehru: Do you also belong to the Nagar community?

A. I do.

Q. When you suggest the separation of two offences do you object to the name only or do you want the punishment also to be different?

A. The punishment ought to be different.

Q. What differences will you suggest? What difference do you want in ages?

A. In extra-marital cases it should be raised to 18 or more.

Q. And for kidnapping also you would raise it to 18 or 20?

A. Yes.

Q. For marital cases?

A. 16.

Q. You want to have the offence compoundable with the sanction of the court or without the sanction of the court?

A. Even without the permission of the court, so that there may be more chances of reconciliation between the husband and wife: otherwise the girl's life will be ruined.

Q. You have also suggested the same punishment as your predecessor (Mr. Mehta) and you have heard my suggestion about security bonds. Will you also agree with that?

A. Very light punishment under Section 562 of the Criminal Procedure Code should be given. Where there is injury the husband may be tried under the 'grievous hurt' section.

Q. You have not suggested to whom should the right of complaint be given? Do you agree with Mr. Mehta?

A. To be girl and as well as her parents.

Q. And also to the social reform societies.

A. Well, I have not much faith in these societies. But it will do no harm if you give them this power. I will restrict it to the girl and her parents.

Q. If it is restricted to the parents of the wife do you think there is much likelihood of such complaints being made?

A. I don't think. If there is really any injury it will come out and particularly when the trial takes place in camera and not in the ordinary court then the complaints will be made.

Q. Why is it that so far parents and guardians have not taken advantage of the law?

A. It is some sort of sentiment.

Q. How do you think this sentiment will disappear in future, unless some outside body is given power to make a complaint?

A. It would rather go away if you do not try the offence as a heinous offence of rape.

Q. Only that much alteration will be sufficient to induce the parents to bring forward complaints against the offender.

A. Some sort of stigma applies to the word 'rape'.

Q. Supposing all these suggestions, made by you are adopted, in that case, do you think that parents of the girl will bring forward complaints against their sons-in-law?

A. I think they will come forward.

Q. Do you think that if there are societies which will give them help and on which the parties aggrieved will be able to rely it will facilitate the work?

A. I have not thought over this.

Q. If societies make the complaints the whole odium, of making complaint does not fall on the wife or her parents.

A. If you put it that way and if you think that such workers and societies can be found and will do good they may be given power.

Q. Has Gujrat got sufficient number of public spirited women to take up that work?

A. There are, we are happy.

Q. At any rate for Gujrat it will be a good arrangement?

A. Yes.

Mr. Bhargava: May I understand that in your scheme of things even when these laws are passed there would be very few prosecutions and you would like that these few prosecutions may be made examples of and these provisions may not be used in a punitive manner? Or are you out for punishing every family and running it?

A. When you make it an offence everyone should be punished. Offence is an offence. If there is an injury the man may be punished with punishment provided under 'simple hurt' or 'grievous hurt' section. All offenders should be punished.

Q. You are in favour of giving discretion to prosecute only to the district magistrate. Even the parents would have to come to him.

A. I exclude outsiders except through the district magistrate.

Q. You have suggested some very light punishment like fine or an admonition. If the fines alone are to be awarded as punishment it may not act as a deterrent at all. Would you not like that a provision for imprisonment be made and it should be left to the discretion of the particular court exercising jurisdiction to award fine or imprisonment?

A. I agree that the discretion as far as punishment is concerned should be left to the court. Imprisonment should be provided and it is for the court to give it or not.

Q. You said you were in favour of the offences being made compoundable without the sanction of the court. The difficulty is that wife is generally the person who suffers and she will be ever ready to make a compromise, and in 99 cases out of 100 there would be a compromise and the courts would be powerless. Are you in favour of arming the court with the power to sanction compounding?

A. I think it ought to be compoundable at the will of the girl and all concerned and the court need not meddle.

Q. The girl will generally be a minor, between 12 and 18. Then if many compromises are allowed the law will not work satisfactorily. At present also in grievous hurts the offence is compoundable with the sanction of the court?

A. My object is that if they compound among themselves the life of the girl will not be miserable further. I would like it to be compoundable with no conditions.

Q. And you would keep the offence cognizable?

A. All marital offences should be non-cognizable.

Q. Generally these days in many places the husband and the father of the girl live in the same place but there are cases when they live at a great distance from each other. In such cases when a crime occurs and there is injury to the girl her parents, etc., will not be able to arrive on the scene and the whole evidence will disappear. The injury will be healed up and there will be no evidence. The evil effects would go away and there would be failure of justice in that case. Would you therefore make the offence cognizable if the girl is below 14?

A. No.

Mr. Mitra: Is it correct to say that you are more for marriage laws than law fixing the Age of Consent even though you would not be against fixing the Age of Consent?

A. Yes. That is my view.

Q. What ages do you recommend?

A. 16 for marriage as well as consummation.

Q. If the marriage law is passed there would be no necessity for any law for consummation?

A. If the age is same.

Q. As regards fixing the age of marriage do you think there would be any great opposition to it?

A. No. In fact we are having marriages already at that age.

Q. There is an opinion that there would be hne and cry among the masses if the age of marriage is fixed. What do you say?

A. I don't subscribe to that.

Mr. Mudaliyar: May I understand that the District Magistrate is to have the discretion in giving previous sanction or is he merely to satisfy himself that a *prima facie* case exists and grant sanction?

A. If a *prima facie* case exists the sanction will be granted.

Q. So far as punishment is concerned, if there is a serious injury you want the husband to be tried under the 'grievous hurt' section and if there is a slight injury under 'simple hurt' and if there is no injury you simply want to give the boy a mild admonition under Section 562, Criminal Procedure Code?

A. Yes.

Q. You realise that the object of preventing early consummation is not merely that no physical injury may be done at the time but it is also to prevent that irreparable injury that may be done both to the girl and her progeny by means of this early consummation. Do not you think admonition will not be sufficient in those cases?

A. Our object will be gained if we try the case under Section 562, Criminal Procedure Code. It will be something like conviction.

Q. You think that the black-mark that a boy will get will be a sufficient deterrent?

A. Yes. He may be asked to furnish security and bond.

Q. Have you reason to believe that at present offences do take place within the marital state?

A. I think such offences do take place. Even the present punishment has not been a sufficient deterrent.

Q. Do you think then that this admonition except in the case of respectable families where punishment till the rising of the court even is sufficient, be deterrent enough. What does this punishment mean to a man in a village who hardly ever comes to the court?

A. We follow the same procedure in the case of 'Badmashes', when people are brought before the court under good behaviour section. We try them in the same way.

Q. But here is an ordinary man and there is a 'Badmash.' Why should the ordinary man be tried in the same way? There the penalty is a heavy one if the offence is repeated.

A. Here also punishment may be given if the bond is broken. He could be fined Rs. 100 or 200 according to the status of the man.

Q. Do you think that that will stop the boy from repeating the offence?

A. I think so.

Q. Don't you think it would be an unjust discrimination against a poor man and in favour of the rich man?

A. In the case of a poor man the magistrate will ask him to pay less fine, say, 50 rupees.

Q. You said these offences should be compoundable.

A. Yes.

Q. Who is the other party to the composition?

A. The girl.

Q. Who do you suggest should lay the information?

A. The girl or her guardians.

Q. Would you extend it to the relations of the girl?

A. I am using the word 'guardian' in the general sense of the word.

Q. If those bonds are taken and the offence is compounded and if the offence is repeated again what would you suggest for that?

A. There must be a severe punishment then.

Q. Would you not allow compounding in the second offence?

A. There ought to be some discretion to the trying magistrate in which case they should be permitted to compound.

Q. Would you then suggest the sanction of the magistrate before compounding is done?

A. We must allow discretion to the magistrate.

Q. You have said that in the case of these marital offences if there is injury the husband should be punished under the 'hurt' section and if there is no injury you should just admonish the boy. That punishment is irrespective of the age of the girl. Would you give the same punishment if the girl is under 13?

A. Upto 13 it should be as it is now. Between 13 and 16 the age which I suggest should be fixed for marital cases, the punishment should be what I have suggested.

Mr. Kanhaiya Lal: You have said that no prosecution should be started without the sanction of the district magistrate. Don't you think it will lead to unnecessary prolongation of the enquiry and possibly to the disappearance or the suppression of evidence?

A. Why should the enquiry be prolonged, cognizance can be taken in no time.

Q. The man who applies for sanction will produce evidence, and a notice will have to be issued to the accused to say why sanction should not be granted. All that will take a certain amount of time and may lead to collusion and suppression of the evidence, whereas if the cognizance is taken direct the enquiry can start at once.

A. If the parents or any other person duly authorised goes to the district magistrate, then of course the magistrate can judge whether there is any offence or not. In the case of direct complaints the sanction should not be required.

Q. Would you like that in order to eliminate false and frivolous prosecutions the district magistrate or the trying magistrate may make a preliminary enquiry before issuing notice and starting the prosecution, under Section 202?

A. I only want that it should not be easy anybody and everybody to go and put the law in motion and the magistrate should also be of the highest grade.

Q. There are two methods of limiting prosecutions. One is previous sanction and the other is a preliminary enquiry. If the magistrate is satisfied that there is a clear case he may start the prosecution. Do you agree?

A. So far as sanction is concerned, I do not mind I want only a preliminary enquiry before the prosecution is launched.

Q. Would you be in favour of matrimonial courts for the trial of these cases, both for the purpose of expediency and for the purpose of creating confidence in the public mind such court may consist of a magistrate and two non-officials?

A. I would be in favour of such a court.

Written Statements of persons not orally examined.

Written Statement, dated the 2nd August 1928, of Mr. MOTIBHAI OTTAMBHAI PATEL, B.A., Assistant Commissioner, N. D., Ahmedabad.

1. Not much to my knowledge.

2. The Age of Consent outside the marital relations needs certainly be raised to 16 years. Girls below this age are prone to be easily misled, and in the interests of the girls as well as of the society it is most desirable that the offenders should be brought within the scope of the penal law. It needs hardly be mentioned that of the offences of rape committed on young girls only a few cases of the most abominable nature come to light. However, the raising of the age will expand the scope of the section, and thereby help in reducing the crime.

3. The crimes are not of frequent occurrence, and even when they occur, on account of the social disgrace which they entail upon the girls and their parents, only a few of them concerning especially the lower classes and committed on girls of very tender age are actually brought to book. The raising of the Age of Consent to 14 years has in my opinion to some extent helped in checking the crime. Unless parents of the girls co-operate with the Police it is not possible to achieve the desired end.

4. I do not think so.

In the advanced and educated classes marriage is being put off beyond 13 years, but that is a result of education and not of the existence of the penal law.

Mr. Sarda's Bill is likely to afford protection to married girls. If that Bill passes into law I do not think it is necessary to enact the new Section 376-A.

5. Girls usually attain puberty between 14 and 15 years of age. It comes somewhat earlier among girls of the advanced classes than among those of the backward classes.

6. (1) No.

(2) Yes.

(3) In rare cases. Such cases do not come to Court.

7. I am unable to answer this question not being acquainted with religion on this point.

8. The ceremony is confined to a few castes. So far as I am aware the ceremony is posterior to consummation of marriage, and is performed soon after the attainment of puberty by a married girl.

9. Not always. Much depends on the constitution of the girl. I think consummation should take place after puberty is attained. The usual age for consummation without injury to health may be put down at 16. But this will be considered ideal in the present state of society.

Usually cohabitation takes place between 14 and 15 and that requires to be prevented in the interests of the girls. Among advanced people the parents do not allow their married girls of this age to stay with their husbands for more than a month or two in a year.

10. Not before 16 years.

11. Yes, in one case a girl conceived before she was 14, and the result was that she died while under confinement.

12. Early consummation and early maternity are mainly responsible for high maternal and infantile mortality.

13. Yes, but it is still confined to people of educated and advanced classes.
14. Some illiterate women do favour early consummation of marriage for their children, but a large majority of them are against this.
15. Yes, in some cases where the births of the girls are not got registered in the Birth and Death Registers, Compulsory registration of births in rural areas might remove that difficulty.
16. I do not think so. The difficulty will still remain the same as before.

17. Yes. The nature and amount of maximum punishment prescribed in the Bill appear suitable.

18. I do not think there is any need for making a difference in the procedure of trials.

19. I have no suggestions to make on this point.

20. Fixing a higher Age of Consent for marital cases is not at all likely to be more effective than legislation fixing the minimum age of marriage. The fixing of the minimum age of marriage would be in consonance with the public opinion. The other alternative is simply a makeshift of no great practical value. The offence being a non-cognizable one the penal provision will remain almost a dead letter.

21. The penal law is certainly necessary for cases outside the marital relations, but for marital cases I would prefer to rely on the progress of social reform and advocate Mr. Sarila's Bill.

Written Statement, dated the 2nd August 1928, of Mr. D. R. NORMAN, I.C.S., District and Sessions Judge, Kathiawar.

2. I am in favour of raising the Age of Consent to 16 years as proposed; I do not think that a girl under that age has sufficient understanding to realise what she is doing if she consents to sexual intercourse. Further in many cases it is not possible to prove the age of the girl precisely as in this part of the country at any rate the birth registers are not well kept or not kept at all. A charge of rape when the victim is a little below the Age of Consent is, therefore, likely to fail because no doctor can estimate age with exactitude and oral evidence of age is seldom reliable.

3. I have tried two cases of rape in the 4 months I have been in Rajkot, in one of which the victim was under 14. I have never been in one station long enough to estimate the effect of the 1925 amendment.

10. As said above I do not think an intelligent consent can be given under the age of 16.

15. I have pointed out these difficulties in my answer to question No. 2. The only remedy I can suggest is the more careful supervision of the Birth Register. But I do not think it would be practicable to make non-registration an offence.

16. I do not think the margin of error would be minimised by raising the Age of Consent, but this is really a medical question.

17. I have never met a marital case and I regard it as highly unlikely that such a case would come to light unless grave physical injury supervened. In such cases I think a fairly heavy maximum punishment is desirable and would suggest 5 years' rigorous imprisonment and for fine.

18. I see no reason for differentiating in the procedure in marital cases. But I cannot really ensure this question without knowing the procedure proposed.

19. In my experience the factum of sexual intercourse is nearly always true, but I think many charges are preferred when there has really been consent. I do not see how this can be remedied.

20. I am against raising the age for marriage as I do not think public opinion is ripe for it and legislating in advance of public opinion in a naturally conservative country is in my opinion a grave mistake.

21. Social propaganda and strengthening the law can well go together.

Written Statement, dated the 4th August 1928, of Mr. LALLUBHAI C. SETH, Joint Sub-Judge, Nadiad.

1, 2 & 14. The mass population in rural areas is most ignorant of the law relating to the Age of Consent. But human nature as it is, the early marriage prevalent amongst the Hindus has much to answer for the present complaints. There has been however great progress during the last 30 years. Formerly girls of the middle and higher classes hardly remained unmarried at the age of eleven. Now as a rule the girls in those classes get married at 13 or 14 and in some classes after 16. Relating the consummation of marriage also takes place after 14 or 15. This state of progress has not yet reached the backward and lower classes of Hindu Society, in which early marriages are still prevalent. In order to bring these classes in common with the higher ones an advance on the present law is necessary.

3. Crimes of seduction or rape are not frequent in any part of the country.

4. As regards offences within the marital state are concerned rarely few are detected, the only way to prevent this is to raise the age of marriage, and the consummation of marriage will in its due course be postponed.

5. Usual when the girl's puberty on our side is 14 to 15. It is earlier in the higher classes than in the lower, backward or labour classes.

6. & 11. (1) No.

(2) Yes.

(3) Not now, it was so begun sometime.

Very few cases come to Court. To my knowledge one case had been come to light, in the town of Ankleshwar in the Broach District in the year 1911-12 or so. One Mewada Bania had married a second wife (his first wife having died) aged 11. A few months after, i.e., before she completed 12, there was consummation of marriage and the very first morning after the first night the child-wife was found dead. Complaint was lodged by Police, and the husband was convicted to 18 months Simple Imprisonment.

7-8. I know of no religious injunction for the early consummation of marriage. I attribute it to blind custom. There is no "Garbhadan" Ceremony on this side of Gujarat as it is in the Deccan.

9. I do not consider attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. In her 16th year or more properly after she completes her 16th year, a girl's physical development is considered enough to justify such consummation without injury to her own health and that of her progeny.

10. At 16.

12-13. As a result of early consummation and early maternity maternal and infantile mortality is very heavy. There are thousands of child-deaths. People in many instances marry when they are hardly able to stand on their legs. They have not sufficient means to maintain themselves much less their wives and children. So the anxiety of married life, anxiety to maintain themselves and get settled in life, and anxiety for the safety of their children do tell upon the health of the married couples and the result is intellectual and physical deterioration.

The rest of the questions relate to law in the discussion of which I need not enter. Personally I am of opinion that the Age of Consent for the girls in the marital state should be 16 and outside 18.

But such a sweeping advance would hardly be acceptable to the country. For as stated above the masses are very ignorant and so I would suggest that 14 years for the girls in the marital state and 16 outside should be fixed at the Age of Consent for the present. After a decade the question be reconsidered in the light of the then existing state of progress.

Written Statement of Sardar Rao Bahadur MOTILAL CHUNILAL, Retired Deputy Collector, Broach.

With reference of your letter No. 42, A. C. C., asking my opinion in regard to the Age of Consent, I have the honour to submit the following in regard to the questionnaire prepared by the committee for the purpose.

2. From what I have been reading in the papers and my observations in my province of Gujrat I believe that the consensus of public opinion specially among women has considerably advanced. In my own caste the marriages of girls take place at the age of 16 and upwards. My own daughter was married as early as 1909 at the age of 19 years and another at the age of 16. My grand-daughter is 19 years of age and is yet unmarried. In another caste also such as Brahmins and Vantias, age of marriage is advancing and I am of opinion that the progress is so rapid that within five or seven years, early marriages will disappear in India. But until this takes place among all castes statutory protection must be given to innocent girls.

3. I am respectfully of opinion based on the information obtained by me by inquiries of the women themselves, that the age of 14 years mentioned in Section 375 and of 13 in regard to the husband with his wife, should be raised to 16. It will reduce mortality and sickness and improve the physique of the girls. Also enable the girls to prosecute their studies further; the necessity for female education being now fully recognised as is evident from the growing population of the school-going children of all classes in the school. In Sections 376 and 376-A and the schedule appended to Criminal Procedure Code, the age should be altered to 16 years.

4. As to marriages I would suggest that the age should be 16 years for girls and 20 for boys. Unless this is done the provisions of Sections 375, 376 and 376-A will be evaded by the husband, who will be tempted to cohabitation. I think, however, that exception will have to be made in regard to earlier marriages under the following circumstances. A girl is the only child of her parents who have become old and therefore desire the girl being settled in their life time because the family may not have trustworthy or willing relations to take care of the girl after their death. Similarly the boy may be the only child to his aged parents who may have property. They would naturally desire that the boy should be married, so that the property may be taken care of during the boy's minority. Such cases may be provided for by legal sanctions given by the Courts.

5. Crimes of seduction or rape of girls have I believe increased in the towns of Bombay and Ahmedabad owing to the cities being overcrowded and the population of seducers being proportionately large there. In my town of Broach such crimes are rare.

6. As the marriages of girls now take place generally after the age of 14 years the amendment of 1925 raising the Age of Consent within the marital state to 13 years, has practically become inoperative in Gujrat, except the big cities, mentioned in para. 5 above. In Surat which is also a big city, such cases may be occurring between husband and wife, but I have not heard of them much.

7. As to attainment of the age of puberty of girls the appearance of menses is considered to be the evidence of the girl having attained it. Early approach of this state is dependent on surrounding circumstances. In the lower classes the girls hear and see much as to what the husband and wife do and naturally the girls get excitement and appearance of menses. In higher families there is a sobriety and restraint, so the girls do not hear and see anything leading to excitement and the appearance of menses is therefore late, i.e., generally at 14 years of age and even later.

8. As to cohabitation, the marriageable age having advanced, the time for it necessarily has gone later. The raising of the marriageable age further will protect the girls from the husband. I am not aware of any case of cohabitation referred to in question 6 going to Court.

9. In answer to your question No. 7, I am not personally aware of any authority, but the fact that my caste has raised the marriageable age to 16 and upwards and other castes are doing the same, the question of consummation before or at puberty has almost disappeared.

10. So far I know "Gharbhdharan" Ceremony in Gujrat is performed when the girl becomes pregnant for the first time, in the eighth month of conception.

11. Your questions 9 and 10 have been sufficiently answered above.

12. During my service as stipendiary First Class Magistrate for 16 years and as Honorary Magistrate of the First Class for a similar period after my retirement, I had not a single case before me of the description mentioned in your question 11.

13. In answer to your question 12, I beg to refer you to my para. 3 *supra*

14. Women generally do not favour early consummation of marriage in any part of the country.

15. During my incumbency as a Magistrate, I do not remember having had more than two cases in which the age of the girl had to be ascertained. I found no difficulty in doing so in both the cases.

16. The difficulty or margin of error mentioned in your question 16 is one which will have to be settled in each case by personal appearance of the girl and medical examination.

17. Your questions 17, 18 and 19—I do not think that any change is necessary.

18. Your question 20—I think that the raising of maritable to minimum age mentioned in para. 3 above more desirable.

19. Your question 21—I recommend both the methods.

20. As to your enquiry whether I am willing to submit to oral examination I beg to state that having become totally deaf for the last seven years, the committee will have to put their questions to me in writing which I will answer orally. Every one here including the highest local officers have to do the same when any consultation between us is required. I have no objection to my oral examination if the aforementioned condition is adopted.

Written Statement, dated the 7th August 1928, of Dr. N. PROCTOR SIMS, M.R.C.S. (England), Medical Officer-in-Charge, Coronation Memorial Zenana Hospital, Junagadh.

5. The usual age at which girls attain puberty here appears to be the 12th and 13th years.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Physical development is not complete, the bones of the pelvis are not

completely ossified and the capacity of the pelvis is not that of the adult woman.

To submit this incompletely developed body to the strain of frequent sexual intercourse, and the stress of pregnancy and maternity is to produce a weakly, inadequate mother and under-sized ailing infants, if indeed both mother and child survive the first pregnancy.

I do not think that a girl's physical development is enough to justify consummation of marriage with the resulting pregnancy before the age of 16 years. This I consider the earliest age at which it should be allowed. The strain of early maternity and difficult labour reduces the resisting power of the young mother to such diseases as tuberculosis and malaria and I have commonly found in my practice that years of ill-health follow a too-early first pregnancy.

10. I do not think that an Indian girl is competent to give intelligent consent to cohabitation, with due realisation of the consequences, before the age of 16 years. This I say in the full realisation that the experiences and cares of marriage are discussed freely even among little girls, but even so, it is not desirable that the period of mental adolescence should be cut short in either boy or girl, by too early assuming the manifold cares and obligations of marriage and the rearing of children.

11. During my professional experience, I frequently come across cases of young girls married just before or at puberty and subjected to sexual intercourse, with the following results:—

- (a) Early infection with Syphilis or gonorrhoea, or both, resulting in chronic ill-health or permanent disability.
- (b) Extensive lacerations of the genital canal during the first delivery owing to the under-development of the mother.
- (c) Hysteria due to the strain of excessive and often painful sexual intercourse.
- (d) High infant mortality, because the infants born of such young mothers are small and weakly, because they die of injuries received during a difficult delivery and because the girl-mother is totally uninstructed in the care and management of infants.

I mention one case.—A Mohammedan girl married at 13 (whether before or after puberty I do not know, but I find that it is not an invariable rule among Mohammedans to wait till puberty before submitting a girl to marriage and sexual intercourse) delivered with difficulty instrumentally of still-born twins when she was 14, developed osteo-malacia afterwards and the pelvis became deformed. Delivered of third child when she was 16, became a complete cripple, now 17 years old and pregnant with fourth child.

12. Yes. I consider early consummation and early maternity responsible for high maternal and infantile mortality. It interrupts the proper education of both girls and boys, it submits the girls to physical and mental strain that they are not yet developed enough to withstand, and the offspring are not such as will form a healthy intelligent and virile race.

In my opinion marriage should be prohibited before 16 years of age and it would appear to be for the ultimate benefit of the race to raise this to 18 years.

Written Statement, dated the 10th August 1928, of Khan Saheb
KASAMBHAI HAJI HASANBHAI GATOR, Bench Magistrate,
 Nadiad.

1. There is on my side no dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian

Penal Code. This is obvious from the exceedingly rare cases of rape both inside and outside the marital state. The number of such cases in the Kaira District does not exceed five a year on an average.

2. The Age of Consent within and outside the marital state may be respectively fixed at 14 and 16. Statistics show that Menstruation in 46 per cent. of the indigents of India begins at the age of 12 or 13. The Indian physician Shun-ruta teaches that menstruation begins at 12 and recurs monthly; but he refers only to the regular recurrence of menstruation as a sign of puberty. After the first menstruation two or three months elapse before the girl menstruates again, but it is only after the lapse of a year that the flow usually recurs at quite regular intervals. Thus a girl may be said to be in puberty at the age of 13. The greatest growth in the female sex always precedes puberty, so that, for example, a girl who begins to menstruate at the age of 12 will grow most rapidly in the year preceding this, *i.e.*, at the age of 11. Thereafter the slowly proceeding growth in girls ordinarily ceases suddenly at the age of 14. The girl may then be said to have attained complete physical development. However the age at which she attains high sexual maturity with her reproductive organs highly developed is, in our climate and race, coincident on the average with the 16th year of her life. The processes of puberty in woman are fully completed at the age of 16 to 18 years, so that from this time forward she is fully equipped for the performance of her sexual duties. The age of greatest development in the respective sexes is:—

	In the female.	In the male.
As regards weight at the age of .	12 to 14 years.	14 to 17 years.
As regards height at the age of .	12 to 13 years.	12 to 15 years.
As regards respiratory capacity at the age of	12 to 15 years.	15 to 17 years.
As regards muscular strength at the age of	12 to 14 years.	14 to 15 years.

This explains the necessity for making an advance on the present law.

3. Crimes of seduction on this side are becoming infrequent and those of rape are rare. The raising of the Age of Consent to 14 years outside the marital state accounts for the still more gradual decline in the crimes of seduction.

4. Married girls under 13 years of age are almost invariably protected against cohabitation with their husbands on account of the moral trend of the social fabric and the high sense of the hygiene of marriage of their parents. This position is not due to the raising of the Age of Consent within the marital state to 13 years.

5. The question about age at which girls attain puberty on my side is cleared in my observations in question No. 2. The age at which menstruation begins is affected by the conditions of life and the social circumstances. In the higher circles of society and in the upper well-to-do classes menstruation appears about a year earlier than among women of the labouring classes who are compelled to strive for their daily bread. Amongst lower class girls the menarche occurs at the age of 13.

6. For the reason stated against question No. 4, the cohabitation is rare in any class on this side before the girl is about to complete 13 years. No case of this kind has to my knowledge come before Courts.

7. Among the Hindus and Mohamedans alike, it is under their respective religious scriptures obligatory to marry girls before the first appearance of menstruation. Marriages delayed till after the appearance of menstruation are regarded as both sinful and disgraceful. Sin leads a way to hell and disgrace to the position approaching that of an outcaste for all religious functions with and for relations and other acquaintances. Hindu Rishis Atri and Kashyapa state that if a girl begins to menstruate before she

leaves her father's house, the father must be punished as if he had destroyed a fœtus, while the daughter herself would lose caste. There are Hindus who regard, every menstruation which has not been followed by coitus in wedlock in the light of infanticide. Experience proves, however, that in our climate, at any rate, girls who marry at the very early age are inferior in fertility to those who refrain from marriage until the genital organs have attained complete maturity. The Hindu and Mohamedan seems by advocating marriages before the appearance of menstruation nicely solved to an extent the problem of over-population which is the subject of emigration and anxiety for countries other than India. This is proved by statistics from Western Countries which show that those women who marry before attaining the age of 20 wait longer for their first pregnancy than those who marry between the ages of twenty and twenty-four. To make a happy home, there must be unity of thoughts in the couple which should live the life of same actions and principles, so that there might be no obstacles in each party of the couple reaching his or her own goal as ordained in scriptures. The consorts can be better moulded when in their teens under the patriarchal roof to the above end, and this treatment following from religious dictums ensured cohesion on religious sentiments in the social fabric rarely found in other countries.

8. No "Garbhadhan" Ceremony is performed on this side.

9. My observations in question No. 2 cover the points raised herein.

10. Consent based not upon emotions, but upon reason which foresees obligations of maternity can be expected from a girl of 15 years of age.

11. I have not come across any case of the type referred to herein, but it appears that cohabitation before or immediately after puberty may result in a diminution both of the tactile and algic sensibility of the vaginal mucous membrane of the girl and in a temporary inflammation of the Vulva and of the vaginal and uterine mucous membrane. The resulting functional disorders may take the form of hyperæmia of the pelvic organs and probably of the lumbar portion of the spinal cord.

12. Conception timed before the development of pelvic regions may impair the beauty of the breasts, the abdomen, the figure and the carriage of the girl. The time of menarche in a girl, i.e., the time between the first appearance of the menses and the state witnessing, along with the regular rhythm of the menstrual function, the full development of the genital organs is in itself and unaccompanied by pregnancy characterized by great changes in the genital organs and in the vital processes connected therewith, by a strong tendency to suffer from a series of very various pathological changes and disorders of function in the principal organs, and by a lessened general resisting power to disease—a change which finds its most definite expression in the fact that in this period of life the mortality among females is much greater than among males of corresponding age. The above changes in a girl in her menarche when accelerated by the pangs of coitus are more likely to work out a high percentage of maternal and consequently of infantile mortality. The important aim of natural development is the perfection of humanity. The qualities of the coming generation depend for the most part upon the qualities of the parents. The gratification of the sexual impulse and the processes of reproduction are therefore in the interests of the well-being of the people, ill-timed when experienced by a woman before the attainment of complete sexual maturity.

13. Most of the educated classes are inclined to the extension of the Age of Consent.

14. The women are in favour of early consummation of marriages for their children, but not in favour of cohabitation before the attainment of sexual maturity.

15. No difficulty is felt in practice in determining the age of girls on the verge of puberty as the following symptoms discerned on medical

examination are sure guides in determining the age on or immediately before puberty:—

- (1) The face of the woman is swollen and bright.
- (2) The growth of hair on the genital organs.
- (3) Notable enlargement of breasts.
- (4) Elasticity of nipples.
- (5) Appearance of a dark brown coloration in the areola around nipples.
- (6) Enlargement of the mons veneris.
- (7) Growth of two hairs (in the absence of any growth of pubic hair) on the pubic region.
- (8) The appearance of a fold beneath the nipple.
- (9) Erection of the nipples.
- (10) The recession of the nipple under pressure followed by its gradual protrusion when the pressure is removed.
- (11) Pain in the region of the Umbilicus and in the uterus; flatulence, shivering, white flux, heaviness in the head and the limbs.

16. No reply remains in view of remarks under question No. 15.

17. Yes; simple imprisonment which may extend to 2 months or fine extending up to Rs. 200 might be prescribed for marital offences. The punishment prescribed by the Indian Penal Code for extra-marital offences should stand.

18. Trials of a separate nature is necessary for marital offences. They may be held by Judicial Courts. The offender should not be handcuffed and kept under Police custody until convicted. The parties and persons not concerned in the actual trial of the case should not be allowed access in the Court room while the trial is going on. The person convicted should be sentenced to Civil Jail and not to Criminal Jail. It is better if such offenders are tried by Headmen of the Caste or Caste Panchayat.

19. If the Caste Panchayat is given the above cases of marital offences, no further safeguards will be necessary.

20. The former, viz., raising the Age of Consent would be in consonance with the wishes of the people.

21. The progress of social reform by means of education should be the sole aim and method for preventing marital offences.

**Written Statement, dated the 9th August 1928, of Mr. S. M. SHAH,
Editor, "Gujerati Punch," Ahmedabad.**

1. Yes.

2. Of all crimes, the crime of rape is the most abhorrent and anything that the State can do to wipe it out must be done at all costs. One of the means open to it to achieve that end is to raise the minimum age below which all sexual intercourse would be an offence in the eye of the State and in my opinion this is the strongest reason why the Age of Consent should be raised to sixteen, as proposed in Dr. Sir Hari Singh Gour's Bill, or even higher. The present age is by far too low and it should be raised as soon as practicable.

3. I do not think I can say much about crimes of rape or rather their extent in my part of the country for the simple reason that I have not with me a regular statistical data to substantiate my impressions in the matter, but I am inclined to think that the crime of seduction for immoral purposes is more widely prevalent than is generally believed or comes within

the legal cognisance of the State. I do not think that the amendment of the Law of the Age of Consent as made in 1925 has reduced the extent of this crime and unless the State takes to abolishing brothels, keeping greater vigilance over the activities of all persons directly or indirectly connected or even suspected of being connected with their maintenance and adopts a system of widespread education and propaganda to raise the moral tone of the Society as a whole by making it less prudish and more conversant with the nature of the re-actions which sexual indulgence has upon the physical and mental well-being of individuals and Society the odds are that it will rather increase than decrease.

4. There has certainly been a growing tendency in the public mind on this side of India to postpone marriage or at least its consummation, particularly among the upper and lower middle-classes, up to and even beyond thirteen, but it is due as much to social and economic causes as to the amendment of the Law of the Age of Consent. As a matter of fact, the inclusion of the marital connection within the sections dealing with the law of rape goes a great way towards alienating public sympathy from legally raising the Age of Consent to a higher level and if only the two were dealt with separately there would be a decided re-action for the better in the public mind towards this question.

5. Fourteen to fifteen is the usual age at which girls attain puberty on this side. It does not materially differ in different castes.

6. No. When such cases occur, they do not generally come to Court.

7. No. Religious injunction, wherever it is brought into the matter, is either an excuse or an apology and it is easily thrown overboard where convenience or conviction demands it.

8. The "Garbhadhan" Ceremony, where performed on this side, is performed during the seventh month of actual pregnancy for the first time and not before or immediately after consummation of marriage.

9. Not necessarily. The consummation age depends entirely upon a girl's physical development and general state of health, although it can never precede puberty.

10. The definite fixation of any year at or after which a girl would be able to give an intelligent consent can only be arbitrary. The higher it is, the better.

12. Yes. But it is only one among many causes that produce this result.

13. There has been a decided development of public opinion on this side of India in favour of raising the Age of Consent both for marital and extra-marital cohabitation since 1925 and although it is more vocal among higher and middle classes it can fairly be called general. At least, the tendency is towards broadening rather than narrowing down to a small circle.

14. Except among the labouring classes, No.

17. Where marriage is conventional and decided upon by persons other than the bride and the bridegroom themselves, there could be no rational ground for separating marital from extra-marital offences. However, public sentiment is frankly in favour of that course and it would be perhaps expedient to separate the two offences. As regards punishment, however, I am in favour of only a slight variation both in the nature and degree of punishment for each.

20. I am sceptical, if not pessimistic, about the effectiveness of legislation in marital cases. If, however, it is to be undertaken, I would prefer legislation fixing a higher minimum age for marriage to fixing a higher Age of Consent. It would be more in consonance with public opinion as well as more effective because its breaches would be easily detectable.

21. Education and propaganda ought to be the rule and basis of Social Reform. Penal law is useful only as a supplement to public opinion.

Written Statement, dated the 11th August 1928, of Mr. K. K. THAKOR, B.A., LL.B., District Judge, Kaira, at Nadiad.

With reference to your letter, dated the 26th July 1928 inviting my opinion on the points embodied in the Questionnaire prepared by "The Age of Consent Committee" I have the honour to observe that having regard to the limited time at my disposal as well as to the restricted sphere of my experience, I have been able to express my views only on points Nos. 1, 2, 3, 5, 9, 10, 17, 20 and 21 included in it. My answers regarding the said points for reasons recorded below are as per annexure.

2. As far as I am able to judge the educated classes in this part of the country do not seem to be quite satisfied with the state of the law as to the Age of Consent, as contained in Sections 375 and 376 of the Indian Penal Code and would welcome an advance on the present law.

3. The girls in this Presidency ordinarily attain puberty at the age of about fourteen, but it is in my opinion, extremely doubtful, as to whether in the best interest of their health and of the health of their progeny, consummation would be desirable at that age. The ideal, in my opinion, to be gradually worked up to, by creating healthy public opinion, would be to defer consummation till the girls complete their sixteenth year, an age at which an average girl could be relied upon "to give an intelligent consent to cohabitation with a due realization of consequences". In this connection one may well bear in mind the following observations in the statement of objects and reasons to Bill No. 12 of 1924, *Gazette of India* 1924, Part V, p. 49—"Books of medical jurisprudence establish the fact that the age of puberty in India is attained by a girl upon her reaching the age of fourteen. Even though puberty may be reached at that age it is obvious that girls are unfit for sexual cohabitation till they are older and more developed in physique and strength. The appalling infant mortality in the country is partially ascribed to early marriages and the consummation which follows with immature girls. It is, therefore, not only for the protection of minor girls as also of their progeny that the Age of Consent should be raised to at least fourteen years".

4. From volume IX, page 612, para. 1238 of Halsbury's Laws of England it appears that the Age of Consent in England—where girls attain puberty at a comparatively higher age—is thirteen; from para. 1247 at page 616, it further appears that "Any person is by statute guilty of a misdemeanour who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of a girl of or above the age of thirteen years and under the age of sixteen years. The consent of the girl is immaterial. The punishment is imprisonment with or without hard labour for not more than 2 years". As far as extra-marital offences are concerned we have, in our present definition of rape, gone beyond the English Law. Under the circumstances it would not in my opinion be desirable, as proposed by Dr. Gour in his bill to raise the age from fourteen to sixteen, in clause (5) in Section 375 of the Indian Penal Code. It would in my opinion be better to have a separate section—on lines of Section 376-A proposed by Dr. Gour—making it penal for a man to have sexual intercourse with a woman even with her consent, when the woman is between fourteen and sixteen years of age.

Penal Legislation, in my opinion, to be really effective, should be only slightly in advance of the public opinion and Section 375 might be amended as proposed by Dr. Gour after the new section proposed by me—which lies mid-way between the law as it now stands and as it would stand as a result of Dr. Gour's amendment—has been in operation for some years.

5. As regards the intra-marital offences the Legislation in this country has not lagged behind England and it would not in my opinion be desirable at present to amend the exception to Section 375 of the Indian Penal Code by raising the age from thirteen to fourteen. If Mr. Sarda's bill is passed, such an amendment would be more or less redundant as marriages would

not thereafter be ordinarily consummated, before a girl would complete her fourteenth year. In my opinion, it would be more effective to have legislation fixing the minimum age for marriage with comparatively light sanction for infraction of the law, than to have penal legislation—with higher sanction and stigma fixing a higher Age of Consent. As far as I can express an opinion, in the matter, the public opinion also would not be in favour of a husband being dragged to a criminal court for having sexual intercourse, with his wife before she has completed her fourteenth year. In view of the considerations mentioned above it would not, in my opinion, be desirable to add Section 370-A to the Penal Code as proposed by Dr. Gonn and to create the new offence of "Illicit married intercourse" unless there was no likelihood of Mr. Sarada's Bill being passed.

6. Even in a democratic country like England "the wife is unable to retract the consent to cohabitation which is a part of the contract of matrimony" *vide* para. 1236, page 611, volume IX of Halsbury's Laws of England. In India, amongst Hindus marriage is a sacrament in consequence of which the separate personality of the wife is—so to say—effaced and she becomes one with her husband. "Law regards sexual intercourse as the normal exercise of physical functions. It cannot and does not repress or discourage it. It is indeed necessary for the weal and continuance of Society." Under the circumstances, it would, in my opinion, be desirable to put extra-marital and marital offences in different categories as suggested in paragraphs 4 and 5 of my letter.

7. Most of the educated people in this Presidency desire that consummation of marriage should be deferred till girls become quite mature; the object in my opinion would be attained by strengthening the penal law as suggested by me, *pari passu*, with the progress of social reform by means of education and social propaganda. It would not in my opinion do to leave the work entirely to the latter agency.

8. The Kaira District is regarded as the Premier Criminal District in the Bombay Presidency proper; as such we have a fairly large number of cases of seduction and some cases of rape in the Sessions Court, Nadiad. In some of the cases under Sections 360, 360-A and 368, it is found that the kidnapped girl is, as a matter of fact, seduced to illicit intercourse; such girls are often found to be between fourteen and sixteen, and it would in my opinion be desirable to strengthen the penal law as suggested in para. 4 of my letter, so as to penalise sexual intercourse with such girls even when they—because of their immature understanding—have consented to it.

9. In view of the limited time at my disposal I have been able to discuss in my letter—and that too briefly—few out of the many points included in the questionnaire. In case the Committee so desires, I would be glad to present myself before it for giving oral evidence in order to amplify the points adverted to in my letter.

Replies to Questionnaires.

1. Yes.

2. In interest of the health of the girls and of their progeny an advance on the present law is desirable.

3. There are many cases of seduction in this District; their number is not reduced as a result of the amendment of the law; measures are suggested in para. 8 of the letter.

5. Fourteen.

9. No; when the girl completes her 16th year.

10. After she completes her 16th year.

17. Yes; *vide* paras. 4 and 5 of the letter.

20. No; the latter.

21. I would rely on both working *pari passu*.

Written Statement, dated the 11th August 1928, of Mr. P. P. BALSARA, L.M.S., B.M.S., Civil Surgeon, Broach.

I must candidly admit that my personal knowledge and personal experience in these matters is not at all wide. Besides my experience is limited to the state of affairs as it exists in city, towns and not in villages and it is also limited to the Province of Gujerat in Bombay Presidency.

1. There is no particular dissatisfaction on the side where I am residing.

2. The circumstances which in my opinion justify an advance on the present law are:—That early marriages lead to early consummation of marriage and early consummation of marriage is very likely to lead to early motherhood and motherhood earlier than at 17 years of age leads to a breakdown of the health of the very young mother by making her a prey to such diseases as consumption, anæmia, nervous debility, premature senility if not also in some cases premature death. The child or children born of such mothers also are not well-developed, they remain weaklings and mortality among them is comparatively higher than among children born of fully developed mothers.

3. I do not think crimes of seduction or rape are frequent in my part of the country. I am unable to say if the amendment of the law made in 1925 raising the Age of Consent to 14 years has succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes.

4. (1—3) I am not in a position to answer this question.

5. High class and city girls on an average attain puberty at the age of 13 and labouring and depressed classes and village girls attain a year later, *i.e.*, at the age of 14.

6. (1) No.

(2) Yes, to some extent only.

(3) No.

7—8. No.

9. No. It should be enough to justify consummation of marriage earliest at the age of 16 and at least three years after the age of puberty.

10. It depends upon whether the girl is literate or illiterate. But it should not in my opinion be earlier than 16.

11. Very rarely have I come across such cases. Age was 11 years and injury sustained was severe bleeding from the genital canal (vagina) and inflammation of its surrounding parts.

12. Yes.

13. To some extent educated persons are of the opinion that the Age of Consent should be extended.

14. With rare exceptions they do not favour early consummation of marriage for their children.

15. Not to any appreciable extent. Consulting Municipal Registers of births, of vaccination and Registers of Schools, where children attend Schools and Horoscopes if available would minimize and remove these difficulties.

16. Yes, to some extent.

17—18. No.

19. I am unable to answer this question.

20. I think penal legislation would be more effective than legislation fixing the minimum age of marriage, but at the same time I think the latter alternative would be received more favourably by the public in my part of the country.

21. I would rely more on the progress of social reform by means of education and social propaganda than on the strengthening of the penal law to secure the object in view.

**Written Statement, dated the 11th August 1928, of Mr. Z. D. AHMAD,
District Superintendent of Police, Panch Mahals, Godhra.**

1. The educated and more advanced section of the population is not satisfied with the present state of law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code.

The backward and illiterate section is indifferent to and practically ignorant of the existing provisions of law.

2. I am in favour of an advance on the present law and should suggest the raising of the Age of Consent to 15 irrespective of marital state or otherwise. The reasons for this suggestion are:

(a) Sexual intercourse before 15 generally has a disastrous effect on the health of girls.

(b) Consent given before 15 would hardly be a valid and intelligent consent on account of the undeveloped state of mind.

3. No. Rape with under-age girls outside the marital state being rare in this part of the country the amendment of law has made no material change.

4. With few exceptions, such cohabitation as a result of family arrangement, is not allowed before 14. The bride is allowed to go and live with her parents in law only after she attains puberty and hence her actual sexual life does not begin before the completion of her 13th year. Generally speaking the consummation of marriage earlier than the 15th year is very undesirable.

5. In urban areas and amongst well-to-do classes from 12 to 14—generally 13. In rural population generally poor classes between 14 and 15.

6. (1) No.

(2) Yes. Very often.

(3) Seldom.

No such cases come to Court.

7. Early consummation of marriage at puberty amongst the orthodox section of the Hindus is popularly attributable to some injunctions of Manu on the subject and is also based on long standing custom. Grown up girls are, it is a common belief amongst Hindus, a cause of grievous sin to the parents as long as they continue unmarried. "Kanya Dan" must precede the girl's puberty. Child marriages are also very common amongst the Ghanchi and Bora Musalmans of this District, but they are resorted to as a rule on account of economic convenience—being a much less expensive arrangement. Several minor girls and boys are put through the form of marriage simultaneously to avoid separate wedding expenses in the event of grown up marriages. Consummation of marriage however is delayed as a rule till the girl actually attains her puberty.

8. No.

9. No. At least about 2 years must elapse after the development of the 1st signs of puberty—generally speaking when she completes her 15th year. Strongly sexed or over grown girls of course form the exceptions.

10. After she has attained the age of 15 at least.

11. The present state of the health of women folk in generality of Indian homes of higher classes are a sufficient testimony to the evil consequences of precocious cohabitation. Uterine complaints like leucorrhœa

amcnorrhœa, dysmenorrhœa, irreparable damages to the maternal passage, etc., and the anæmic condition of young brides in Hindu and Mohamedan homes are attributable more to premature sexual relations than to anything else. Pale faces and haggard looks of young women have their origin in the majority of cases in uterine difficulties and evidently such troubles make them easily vulnerable to T. B. and directly affects the health of the progeny.

12. Certainly. The uterine system getting debilitated at the very outset, resistance to disease is automatically weakened. Nerves get shattered and owing to the onslaught of that dreadful disease leucorrhœa which is perhaps the most common complaint in the female section of the urban population, the constitution of the generality of girls is undermined. They can't stand the maternity strain, repeated deliveries further undermine their general health and hence high maternal mortality. Their offsprings naturally are weak and either die early or remain stunted in their growth—both physical and intellectual. No amount of "Baby Welfare" I am afraid will be of material help to the country unless and until mothers are given a full chance of building a proper stamina before undergoing the ordeals of maternity and baby building. Weaklings never make a virile nation. They are a burden and a handicap to the physical and intellectual progress of the country.

13. Yes. Educated sections amongst all classes and communities are realising day by day the grievous mischief of an early Age of Consent in marital cases. The same, however, could not be affirmed about the man in the street who partly on account of his ignorance of sexual matters and partly because of his conservatism pays no serious attention to this subject.

14. Yes. Mothers and grandmothers of the old school do crave for early consummation of marriage and early babies.

15. No, not to my knowledge. Birth entries in particular are generally available, failing that vaccination registers, school certificates and medical expert's opinion are sufficiently helpful in determining the age.

16. Yes. A girl 15 years old looks something different from a child of 13 particularly her breast development in generality of cases will be quite striking.

17. Yes. In the marital offences the punishment may be a little lighter. I am in favour of maintaining the alternative punishment of fine in cases of marital rapes.

18. Both the offences should remain cognizable, but in case of marital offences the investigation should not be made by an officer below the rank of an Inspector of Police as at present. Trial *in camera* may be specially provided for in cases of respectability. Such cases may also be made cognizable by First Class Magistrate.

19. See above. For minimising the chances of collusion the relations of the bride and the bridegroom anyway assisting or facilitating the consummation of marriage before the age of 15 by their conduct or action should be made liable for abetment of the offence.

20. I should think that the fixation of the minimum age of marriage will be a more effective procedure than prescribing a higher Age of Consent in marital cases. The question of the consent being a quiet and a purely domestic matter it would be extremely difficult to prove or disprove the same in the event of a criminal prosecution.

I am inclined to think that the educated classes will have no serious objection to this alternative. The orthodox section however which is fortunately declining in influence will probably resist either alternative.

21. I should personally prefer the strengthening of the penal law, though much undoubtedly could be achieved by social and educational propaganda, but unfortunately the progress of social reform as well as the advance of higher education has been much too tardy and would still take half a century at least to bring about the desired results. In a conservative country like India with a heterogeneous population following different

3. Crimes of seduction are frequent in this part of the country but not of rape. The amendment of the Law made in 1925 has had little effect in preventing or decreasing the number of offences relating to rape outside the marital state and the seduction of girls for immoral purposes. Law will not have so much effect unless social education and social reforms progress well. The latter will improve the present situation much better rather than the strengthening of the penal law. But in order to control the offences, strong amendment of law and its wide publication is necessary. However further increase in the term of imprisonment may not have the desired effects.)

4. The amended law is not so widely known in rural areas; hence I observe no change either by way of postponing the consummation of marriage or putting off the marriage ceremony. Wide publication through the village officers and village organisations would probably make it effective.

5. Girls attain puberty in this part of the country generally at the age of 13 to 15. It differs in different classes of societies. Girls of Kolis, Thakerdas, Rajputs, Rabaris and such others who are called labour class people attain puberty little later. Girls of high class Hindus attain puberty at their early age owing to their good nourishment, etc.

6. (1) Cohabitation is not common before puberty among high class Hindus. But especially when the husband is married a second time and is of mature age, say, above 25 years, it is done occasionally among all the classes.

(2) Cohabitation is common after puberty in all classes of people. It is common soon after puberty, provided the girl is in the husband's house at the time of puberty, but when she is away at her father's, generally she is not immediately called in this part of the country at the husband's house for the purpose of cohabitation, but is being called for the purpose thereafter at the husband's when there are marriages, holidays, etc., at the husband's place. In the Deccan and the Karnatak and mostly in southern India, the consummation ceremony takes place generally on or about the 16th day after the puberty.)

(3) Cohabitation is occasionally heard among the low class before the girl completes 13 years.

No such cases have come to the Court so far as my knowledge goes.

7. Yes. Generally the religious injunction is soon after puberty. This authority I may quote later on.

8. In this part of Gujarat no Garbhadhan ceremony is usually performed. In Southern India it is performed. It coincides with the consummation of marriage and is performed soon after the attainment of puberty, say, 16th day after that.

9. I do not consider the attainment of puberty as a sufficient indication of a girl's physical maturity.

At least after a lapse of a year after the girl attains puberty the physical development begins and all the parts of the body grow muscular and show signs of womanhood.

To justify consummation of marriage without injury to her health as well as to that of her progeny, attainment of puberty is not a sufficient indication of a girl becoming fit in all respects to be a mother. The age in this connection should be at least considered the 15th year of the girl.

There are a good many instances of girls having died under pressure of child bearing between 14th and 15th years of their age. In the case of girls above 16 years of age there are less instances of deaths in comparison with cases of early conception between 14—15 and 16 years.

10. I believe a girl of 15 years of age in India would be competent to give an intelligent consent to sexual intercourse knowing full well of the consequences of cohabitation.

11. Instances have been heard of girls having died at the time of giving birth to a child when they are under 14 to 16; even after attainment of puberty at the age of 15 or 16, girls have died due to child bearing. Those who could survive had ordinarily to suffer from general debility and weakness.

Their progeny also are lean, meagre and unhealthy and die a death at the age of 1 or 2 years in many cases. If the child survives after this age, the child is generally weak, healthy and unsound in intellect; dies of consumption and such other diseases arising therefrom. Mother too falls a prey to consumption and dies an early death.

12. Yes. I consider early consummation and early maternity is responsible for high maternal and infantile mortality. Early consummation is against medical principle, as it causes early maternity which in turn results in weak progeny and in some cases infantile mortality.

13. I see no further development of public opinion in favour of an extension of the age of consent since the amendment of the law in 1925. If at all there is anything it might be confined only to advanced classes.

14. Yes, especially in low classes of people. Women of high class Hindus and Mahomedans are not in favour of early consummation of marriages of their children. Parsee women are never in favour of it.

15. Yes. Many a time it becomes difficult to find out the age of the raped girl as cases of rape generally occur in low classes of people and their birth dates are seldom available. The majority of the Patels are found not literate and are mostly found not careful to enter the names of births and deaths in the registers meant for them. There should be a strong check over them and I may suggest that some provision of law may be made in the V. P. Act, making it obligatory on the part of the parents to get the names of births registered just as we find it at 48 of the D. M. Act.

16. Yes. It may minimise.

17. Yes. I would propose that the present punishment laid down in the amended Criminal Procedure Code is sufficient and need not be increased.

18. There should of course be a difference in the procedure of trials for offences within and without the marital state.

The former may be tried by the superior Magistracy and the latter by the Court of Session as they deserve different kinds of punishment under the amended law of 1925 which is acceptable to the public, I think.

19. Yes. The present investigation into the cases by the Police is not always proper and adequate. There may be an inquiry made into such cases by civil officers.

20. I do not think that penal legislation fixing a higher age of consent for marital cases would be more effective than legislation fixing the minimum age of marriage. In this part of the country, fixing of minimum age of marriage will be, I think, harmonious with the public opinion and be more effective.

21. Social propaganda and the efforts made in the direction of social education will tend to secure the object in view. Strengthening of penal laws will not be of so much avail, as the effects of social education and reforms will have their impression in a much better degree.

Written Statement, dated the 11th August 1928, of Khan Bahadur
SHAIKH ALI BAAKZA, J.P., Surat.

Before replying to each and every question in details I may mention now to note that the Islam itself has given the protection of health to young girls. The main question while considering the age consent of the girls should be considered by Oorfe Am. The definition of Oorfe Am is:

to think of the inhumanity, brutality and human slavery involved in the system of immature boys and girls being married by parents without any thought of the responsibilities attaching to married life.

5. In Kathiawar, girls generally attain puberty at the age of 12 or 13 years. It does not differ in different castes, communities or classes of society.

6. (1) Cohabitation before puberty is not common in this part.

(2) & (3) It is frequent though not common after puberty and before the girl completes 13 years.

These cases, if they occur in marital state, do not come to Court.

7. The practice of early consummation of marriage before or at puberty is not due to any religious injunction. It is due to ignorance of parents and relations who foolishly understand puberty to be synonymous with maturity for beginning marital life.

8. "Gauna" or "Garbhadhan" ceremony is not usually performed in this part of the country.

9. Attainment of puberty is no indication at all of physical maturity to justify consummation of marriage. Puberty is in most cases attained at 12 or 13 years in the case of girls whereas at that age all the parts and limbs are hardly even half developed. In the present state of things where the struggle for existence is ever growing a girl hardly attains full physical development before 18. Consummation before the attainment of full physical development, i.e., before a girl completes 18 years, cannot fail to stunt and dwarf the physical and mental growth of the girl and her progeny and to permanently impair their health. I would not, therefore, allow consummation in any case before a girl completes 18 years.

10. A girl in India is not ordinarily competent, before she completes 18 years, to give an intelligent consent to cohabitation with a due realization of consequences, if by "consequences" we mean all the immediate as well as remote consequences. A girl would not at 16 understand or realize in many cases even the immediate consequences.

11. I know of scores of cases in the families of my relations, friends and acquaintances of girls dying through disease and infirmity traceable exclusively to consummation and consequent motherhood before full physical development, i.e., at the age of 14, 15 and even 16 years. Where such girls do, not die they live a life of lingering death.

12. My answers to questions 4 and 11 contain an answer to this question as well. I may add that I feel keenly on this point and I believe that early consummation and early maternity are responsible for much of the high maternal and infantile mortality and for lack of intellectual and physical vigour and for general poverty in the land. My point is that even if early consummation and early maternity did not prove so disastrous 20 years ago they are so now on account of the fact that life has become very strenuous, more or less, in all walks and in all places in recent years. This is one great reason for an immediate and a great advance on the present law.

13. There has been a great development of public opinion in my part of the country in favour of an extension of the age of consent since 1925. This is due to the ever growing maternal and infantile mortality throughout the land. I have lately had talks with some old women who were shocked about five years ago to hear that a girl should remain without consummation after 13 years now saying that in no case should consummation take place before a girl has completed 16 years. The growth of public opinion is general and is not confined to certain classes, though it varies in degree and intensity in different classes.

14. Not now.

15. Yes. The most effective measure would be compulsory registration of all births.

16. Yes, certainly. The higher the age up to 18 years the better the difficulty in determining it.

17. Yes. I approve of the proposed punishment in each case.

18. The proposed amendment of the law in this respect meets with my approval.

19. I have no further safeguards to suggest.

20. Legislation fixing the minimum age of marriage, if that age is as high as the proposed age of consent for marital cases, would certainly be more effective than mere penal legislation fixing the same age of consent for marital cases. Of course the mass of the population would not favour legislation fixing the minimum age of marriage. If the age limit is not to be the same in the two kinds of legislation I would suggest that both kinds of legislation should be resorted to. Each will have its good in its own way.

21. The penal law must join the other means of education and social propaganda in educating early consummation and early maternity. We would rely on all of them together. Penal and other legislation stimulates and reinforces the advanced public opinion, and the growth of public opinion by means of education and social propaganda makes advanced legislation easy and better tolerated by the socially and not backward classes and people.

Written Statement, dated the 9th August 1923, of Dr. DATTATREYA H. MEHTA, Retired Sanitary Commissioner, Baroda State, Bar, sari.

e.g., in the 9th Adhaya of Manu Dharm Shastra it is said "A maiden should wait for three years after the appearance of the menses and then she should seek a suitable husband". So also in the 44th Adhyaya of "Anusasan Parva", Bhishma Pita has said the same thing to Yudhishthira. In Shushruta again, a boy or a girl is said to be growing till 16. Menses appear earlier in high caste girls living in towns than in low caste girls living in villages.

6. I do not believe cohabitation is common (1) before puberty, but it may be said to be fairly so (2) soon after puberty (*viz.*, after appearance of the menses according to popular belief).

(3) If a widower marries a young maiden, consummation before 13 is possible, but I believe it should be very rare amongst young couples—say a boy of 16 and a girl of less than 13.

Educated people generally do not send their daughters to their husbands as early as 13 now.

While I was giving lectures on "Prevention of child-marriage" in the Baroda State, many Kadwa Knubis answered me that though they gave away children in marriage at a very tender age they never sent their girls to their husbands till after 17 or 18. Khatrias of this side also do not send their girls till after 17 or 18.

7. I do not know of any religious injunction to that effect. People have a religious belief that a girl should be given away in marriage before the appearance of the menses, because some Brahmins put forward the precept of "Angira" to that effect.

8. "Agharni" or "Simant" ceremony is performed at the 5th, 6th or 7th month of pregnancy. There is no ceremony coinciding with or anterior to the consummation of marriage.

9. If by attainment of puberty only appearance of the menses is meant, I do not consider it a sufficient indication of physical maturity to justify consummation of marriage. I should consider 18 as a general rule as the fit age for the purpose and only in some few cases 16.

Please refer to answer 5. I would quote here more opinions of celebrated Hindu Vaid of olden times. In "Kalpataru", cohabitation of a man of 25 with a woman of full 16 years is advocated. In "Shushruta" it is said "A man should be full 25 and a woman not less than 16, before he attempts to make her pregnant. Otherwise the foetus will die in the womb, and if a child is born, it won't live long. If it lives, all its organs will be weak, so never attempt to make a very young girl pregnant".

In Vagbhat also, a man of 15 is ordained to create progeny in a woman of 16.

10. I believe, at 18.

11. Yes, many such girls suffer from leucorrhœa, anæmia, uterine troubles, and tuberculous, and the progeny is found weakly, small in weight, and liable to rickets, diarrhœa, and tuberculosis, the mother being not able to suckle properly. I cannot give details, because I have kept no notes.

12. Yes, I believe one cause of the progressive degeneration of the Indian people is early consummation of marriage.

13. The age of consent has been only very recently raised in Baroda. As mentioned in reply to question 1, public opinion in educated classes appears to have developed further.

14. I believe Bania women do.

15. Yes, it is very difficult to determine age of girls between 11 and 14; if the age is raised to 14, the difficulty will be much less.

16. Please refer to the answer to question 15.

20. If the minimum age of marriage for girls is increased to 14, there would be no possibility of marital consummation before that age. Until that is done, penal legislation fixing a higher age of consent for marital cases is necessary.

21. Both are necessary. Education has done much to improve old conditions but still that alone is not sufficient.

Written Statement, dated the 10th August 1923, of Sardar DAYAR TEHMURAS KAVASJI MODI, B.A., LL.B., Bar-at-Law, Surat.

1. No.

2. The age of consent must be raised because girls in India do not attain puberty at such early an age as is commonly asserted and even if they did reach puberty early that is no index of their mind and body having become mature. In India it is a common belief that as soon as a girl reaches puberty she is capable of giving intelligent consent and of entering upon maternity. That belief is slowly changing and by making an advance on the present law we shall bring about a rapid change in popular opinion.

I am, however, in favour of retaining the law of the age of consent as it is in sections 375 and 376 for extra-marital crimes, because I am of opinion that sexual intercourse with a female between the ages of 14 and 16, with her free consent, should not be punishable as severely as the offence of rape. It should be made punishable by imprisonment up to two years with or without hard labour. The law should be amended accordingly by inserting a separate section and not in the manner suggested by Sir Hari Singh Gour.

So far as marital crimes are concerned the age of consent should be raised to 14 years as suggested, because as a rule girls in India do not attain puberty before the age of 14 and girl-wives ought to be protected. I am however not in favour of keeping the same amount of punishment for husbands and other offenders. A husband should not be treated on a par with a criminal who violates a woman.

3. No. The amendment of the law made in 1925 has produced no noticeable change.

4. The amendment of 1925 has produced no noticeable change in this district, because I believe marriages before the age of 13 or 14 have become increasingly uncommon for some time past. Except amongst Kunbis and certain low castes infant marriages are rare.

5. The usual age at which the girls attain puberty in this part of the country is between 13 and 14 years. It does differ in different castes, communities and classes of society. I understand that amongst Ghanchies, Golas and such classes where the mind is early stimulated the girls reach puberty before the age of 13. Amongst villagers the girls attain puberty later than amongst city dwellers.

6. No. No cases come to court.

7. There is no doubt the practice was supported by saying that there was such a religious injunction, but the practice has died down in this part of the country.

8. No.

9. No. This is a question for a medical man. My opinion is that five years after puberty should elapse before a girl could be considered fit for maternity.

10. This depends on the circumstances under which the girl is brought up. Girls of lower classes are much more knowing than those of higher

classes. Girls of the past generation understood things better at an early age. I think the present day girl could give intelligent consent at the age of 16.

11. No.

12. Yes. There could be no two question on the point.

13. I have not noticed any development of public opinion since 1925. The intelligent and educated classes are in favour of an extension of the age of consent and will welcome such proposals.

14. No. That was so in the past generation.

15. No. Still I would suggest that Birth and Vaccination Registers should be more carefully and scrupulously kept.

16. I cannot answer this.

17. I am in favour of separating extra-marital and marital offences. I would retain the present nature and amount of punishment for rape in extra-marital offences, subject to what I have stated in reply to No. 2, and would divide marital offences into two classes: (1) where the wife is under 13 years of age and (2) where she is under 14 years of age and over 13 years of age. In the former case I would treat the husband more leniently than the ordinary man who rapes a strange woman. The offence should be punishable with a maximum imprisonment for two years or with fine. In the latter case I should abolish the punishment of imprisonment. A heavy fine would be quite adequate.

18. No. Except that marital offences may be tried *in camera* if the Judge or Magistrate is of that opinion.

19. The offender should be protected in cases in which he is deceived as to the age of the girl. When the girl is between 14 and 16 and the offender is deceived into believing that she is over 16, the offence should be treated on the same lines as is done in England.

Again no court should take cognizance of a marital offence unless the complaint is made with the leave of the court or any other competent authority.

20. Penal legislation fixing a higher age of consent is likely to be more effective than legislation fixing the minimum age of marriage. Penal legislation would be more in consonance with public opinion.

21. The progress of social reform by means of education and social propaganda would be too slow to secure the object in view. I would prefer the strengthening of the penal law.

**Written Statement, dated the 12th August 1928, of Meherban Sardar
J. V. PATHAKJI, Surat.**

1. Yes. There is dissatisfaction with the law as to the age of consent.

Reasons:—

(a) The age is too small.

(b) It is very difficult for the law to extend its hand of punishment to the guilty husband. If lady doctors do police work, a few husbands may be caught but that is practically impossible.

2. (1) There are no circumstances which in my humble opinion would justify the law of the age of consent as it is, except the fact that there is always a large class of men—they variously style themselves as conservatives, orthodox, etc.—who always think that “What is, is right” and that therefore things should continue as they are.

(2) An advance must be made on the present law.

Reasons:—

(a) Short humanity towards the suffering girls.

(b) The time has come when the State cannot any longer neglect the wishes of the intelligent in such matters.

3. I have a feeling that seduction and rape are not frequent in my part of the country, as compared to some other provinces, say, the Punjab. But this can better be decided by reference to criminal statistics.

I cannot say whether the amendment in the law has been effective or not. I have no figures with me.

4. No. The amendment of 1925 has not, I submit, been effective in protecting married girls against cohabitation with husbands.

(1) Consummation is not postponed because the law is amended. The reason is that the law can be very easily evaded.

(2) Public opinion is too vague a phrase, still I hope that it must have been stimulated a little as all social legislation generally does.

(3) Marriage age cannot go up as a result of the change in the law of consent.

I would propose that the marriage age should be raised, for it is not practicable to prevent husbands from exercising their authority in a matter which by its very nature is screened from public view. Moreover according to the Hindu law the husband is the guardian of his minor wife and as long as the law of guardianship remains unchanged, it is lawful for the parents or guardians of the married minor girl to oppose custody of the husband. The father, according to the law as it is to-day, would be liable for kidnapping his own daughter if he keeps her at his place against the wishes of the husband. Under the circumstances, compulsory raising of the marriage age is, I believe, the best solution.

6. Girls attain puberty between 13 and 14 in the lower communities and between 14 and 15 in higher communities. Medical evidence would be more reliable on such a point than my "opinion".

9. Cohabitation is common "soon after puberty" but not "before puberty" or before the girl completes 13 years. There may be exceptions here and there but few of these cases come to court. Unless the lady doctors of hospitals are compelled by law to report such cases to the police, the hand of law will not be able to reach the guilty parties.

7. There is no religious sanction, so far as I know, for consummating marriage before puberty.

8. "Garbhadhanam" is performed on our side long after consummation, —In my caste, it is done in an advanced stage of pregnancy.

9. Puberty does not, I emphasize, indicate physical maturity which would justify consummation. Of course, there may be exceptions but medical opinion ought to be more weighty on such a point than laymen's opinions.

10. At about 16, i.e., three years after attaining puberty.

This seems to be the opinion of the great Hindu lawgiver Manu, for, he says:—

"After coming into menses, a damsel should wait for three years. After the completion of this period, she should obtain a suitable husband." (Manu Smṛiti, Ch. 9, v. 90.)

I have deliberately quoted this opinion of Manu because there are still in this 20th century orthodox dikhards in all parts of India who would try to prove by misquoting or misinterpreting the Hindu Scriptures that a girl is competent to give consent at 8.

11. I have at times heard rumours of certain young girls suffering after consummation but doctors are the proper persons to be approached for details on such matters.

12. I firmly believe that early consummation and early maternity are responsible, among other things, for high maternal and infantile mortality. The race as a whole also becomes prematurely old at an early age.

13. Public opinion is increasingly going in favour of raising the age of consent. The illiterate portions of community continue to be apathetic as before.

14. No. There are many women who prefer early marriage but as marriage is not, amongst the Hindus, followed by consummation, the mothers are for postponing it as long as they can. In fact this often leads to a quarrel between the husband on one side and the mother on the other.

15. The accused is always proving that the girl is over age but this generally creates difficulties.

The only sure remedy is the starting of a census department working from day to day whose certificates are most reliable. But this would involve a lot of expenditure.

16. Yes, by raising the age of consent to 14 or above, the difficulty of determining the age would be somewhat reduced.

Reason:—A girl after a certain age begins to look like a young woman and by raising the age of consent, the greater are the chances of her looking a woman.

17—19. I am not prepared to offer any opinion on these questions without a proper study of the subject which I shall make if I am called upon to give evidence.

20. Legislation fixing the minimum age of marriage would be comparatively more efficacious. Public opinion in my part of country is in consonance with the above alternative.

Reasons:—

(a) Marriage is a public social event; consummation is a private secret affair.

(b) People can understand marriage legislation with greater ease.

21. I rely on strengthening the penal law.

Summary.

The underlying principle on which I have proceeded:—

I am aware that law can only grow with the growth of the community, that it mirrors social advance, that it can be more efficient than the State whose will it utters and that if it anticipates the development of the public thought, it will necessarily have to wait until the common judgment and conscience grow up to its standards before it can have life.

But still, though in short, the legislator is not the ultimate sovereign in the State, the leadership is certainly his, in so far as he exercises the sovereignty. He should not therefore lag behind the spirit of the age, which is not a national but an international force and whose dictates cannot long be ignored with impunity. It is 36 years since the first bill was brought in the Imperial Council in this connection and it is now high time that the State should take a bold step in such a vital matter as this, as it did in the time of Lord William Bentinck without caring much for unthinking diehards.

My suggestions therefore are as follows:—

(1) The age of consent should be raised to 14, as a first step towards raising it still further to 16.

(2) The minimum age of marriage should be the same as the age of consent, viz., 14. The married girl should be in a position to give consent to consummation on the day of marriage.

Written Statement, dated the 10th August 1928, of Rao Bahadur
RANJIT KALABHAI LALLUBHAI, Surat.

1. No.

2. An advance on the present law should be made, because of physical degeneration of the present generation.

3. No. The amendment made in law in 1925 has produced no visible effect, as in this part of our district crimes of this nature are rare. No measures are necessary to make the law more effective.

4. No visible effect is produced on this side by the amendment of 1925. Of course with the advance of time and education the evil of early consummation of marriage will disappear. Educating the opinion of the people on the question is to my mind a very slow process. It would be much better if the marital age is slowly raised.

5. It does differ in different communities. As a rule in the Hindu Community on this side it is between 12 and 14, nay, sometimes much above that.

6. As a rule not. It is rather common to cohabit after puberty is attained. Cohabitation before a girl completes her 13 years is rare in higher communities, but not so in lower and illiterate communities. Not ordinarily, unless in rare instances if the two parties somehow have come to disagreement after marriage.

7. No. There is no religious injunction, but the practice in question, if it prevails anywhere, it is because of the rites of so-called old practice.

8. No practice in this part of the district and when it existed in the past it was performed at the appearance of the first period, it was as a rule previous to consummation.

9. No. At least a couple of years after puberty marriage should be consummated.

10. Ordinarily between 16 and 18.

11. As a layman I cannot give any opinion on this point.

12. Yes. Looking to the children and progeny of parents whose marriages have been consummated at an early age and of those at an advanced age, I consider early consummation and early maternity responsible for high mortality.

13. No. I would however suggest further increase up to 14 or 15.

14. No. Only in very rare instances.

15—16. No.

17. Yes, the punishment for extra-marital offences should be retained, but there should be no punishment for imprisonment for marital offences but it can be done by prescribing and imposing minimum and maximum fine only.

To my mind the punishment of imprisonment would make the life of both permanently unhappy and specially in communities where second and widow remarriage are prohibited by the custom of the caste.

18—19. No.

20. Public opinion would be against fixing minimum age of marriage. Penal legislation would certainly be more effective, but I am in agreement with R. S. Sarda's Bill. Both should be side by side by way of waking up the notions of the Hindu Community.

21. Progress desired in the second part will be too slow and therefore the penal law would make a rapid progress in public opinion.

Written Statement, dated the 12th August 1928, of Mr. N. S. LOKUR, B.A., LL.B., District and Sessions Judge, Ahmedabad, Bombay.

1. None, except amongst a class of progressive social reformers. The reason for this is that the public at large are not likely to appreciate the importance of this subject. The opinion prevailing among them is that a girl becomes fit for the consummation of marriage, and even to become a mother, as soon as she attains puberty. Very few people, besides the lawyers, legislators, and those who take a particular interest in the subject, are even aware of the age limit for cohabitation prescribed by sections 375—376 of the Indian Penal Code. Such a crime committed by a husband on his wife under the prescribed age will hardly be ever brought to light, and I have never come across any such case brought to court, though the evil practice of sending immature girls to their husbands even before puberty is unfortunately not uncommon. The evil cannot be stopped unless the age of the girl's marriage itself is raised. As regards such offences outside the marital state the raising of the Age of Consent is essential to prevent early prostitution. The extent of this evil is not realized by the general public, who regard a prostitute's daughter as earmarked for commencing her hereditary trade as soon as she attains puberty. Hence no marked dissatisfaction with the existing law as to the Age of Consent is to be noticed.

2. So far as the rape within the marital state goes, I do not think it advisable to raise the Age of Consent. Perhaps from a medical point of view, a girl below 14 may not be sufficiently developed for the consummation of her marriage, but as the attainment of puberty has been recognised from times immemorial as the sign of her fitness, any proposal to enhance that age will not be welcome to the public. Moreover ordinarily 14 is the age of puberty, so that the custom is not far wrong. The fixing of the Age of Consent at 13 is a sufficient guard against cohabitation before puberty.

It is different, however, with cases of rape outside the marital state. The raising of the age is necessary not only for the sake of the girl's health, but to give her time to consider whether she should follow the nefarious profession intended for her. I think 16 is the proper age when she may be allowed to have her own way. Till then she must be guarded against seduction.

3. Very few cases come before the court. There is always a tendency to hush up such offences; and whenever they are brought to the court, it is generally alleged that the offence was committed without the consent and against the will of the girl, and in a few cases the age of the girl is much below even 12. I had to deal with some cases of the latter class. I have not come across any case of rape on a girl between 12 and 14 with her consent since the law was amended in 1925. The critical time is the age of puberty, which is ordinarily 14, so that rapes with the consent of the girl between 12 and 14 are rare.

4. The raising of the Age of Consent within marital state from 12 to 13 has made no change in the custom. Girls scarcely attain puberty before 13, so that the question of consummation of marriage or Garbhadhan ceremony, which is always performed after puberty, has no occasion to be postponed. If any exceptional girl has attained puberty before 13 since 1925, it is not known whether her Garbhadhan was postponed till she reached the age of 13. But it is certain that the raising of the age has not tended to put off the marriage beyond 13. In fact the change has not been felt by the public at all. They feel it only if they are asked to postpone the Garbhadhan even after the girl has attained puberty. I think it expedient to leave that alone for the present, as the adverse public opinion in that matter may come in the way of the more urgent need of raising the Age of Consent outside the marital state.

5. Ordinarily 14. But girls amongst the cultivators are known not to attain puberty till they are 15 or 16.

6 (1) Not uncommon when the difference in the ages of the husband and the wife is great. This is to be found in all the backward communities amongst whom young girls are known to be married to grown-up boys.

(2) Yes. In all the communities, in which marriage before puberty is enjoined, the garbhadan ceremony is invariably performed as soon after puberty as possible.

(3) No.

None of such cases ever come to court.

7. I attribute the practice to longstanding custom rather than any religious injunction. I am not aware of any religious authority prescribing any penalty for postponing the consummation of marriage.

8. Yes. It is performed as soon after the attainment of puberty as it may be found convenient to the parties.

9. This is more for the members of the medical profession to say.

10. I think, 16. But that would not apply to a wife, who generally knows from association her duty to her husband even before she attains puberty.

11. In the only cases of this type which I have had to handle, the ages of the girls were below 9; and they had sustained serious physical injuries to their private parts.

12. Presumably yes; but I cannot speak with any authority on the subject.

13. No. See my reply to query No. 1.

14. Yes. They believe that a girl becomes fit to be a mother as soon as she attains puberty, and are eager to see her a mother as soon as possible. This may also be due to the Hindu belief that a son saves the ancestors from the hell called "Put".

15-16. I cannot say as I had no occasion to deal with cases of rape on girls between 12 and 14. But I have felt a difficulty in determining the age of minors alleged to have been kidnapped. In the absence of birth certificates, oral evidence and the opinion of the doctors are uncertain, and at least in one case I had to give the benefit of doubt to the accused. I do not think that raising the age to 14 or a year or two more is likely to materially reduce the difficulty or margin of error. The only remedy is to impress upon the village officers and the municipalities to see that every birth is properly entered in the Birth Register.

17. Yes. The offence within the marital state is less heinous and I think that the sentences prescribed by Section 376 and the proposed Section 376-A for the different kinds of the offence are proper and adequate, though there are hardly occasions to inflict the maximum punishment.

18. No, except that in the case of the offence within the marital state, the accused or the complainant may claim a right to have the case heard in camera. Even the offence under the proposed Section 376-A should be triable exclusively by the Sessions Court.

19. Yes. In the case of the offence within the marital state, which is made non-cognizable, investigation should not be allowed to be made by a Police Officer below the rank of a Police Inspector. Such offences being rare, the Inspector will not be overburdened.

20. Evidently public opinion is more opposed to the fixing of a minimum age of marriage than to the raising the Age of Consent; but the former is undoubtedly more effective than the latter, as no marriage can be celebrated secretly, and there is the least chance of cohabitation before marriage. So long as people believe that they are enjoined by the shastras to marry the girls before puberty, they will be naturally opposed to fix any age-limit for marriage, especially if that limit were to exceed 12 after which it is believed that a girl may attain puberty at any time.

21. I think it best to move slowly. Any drastic legislation is sure to meet with vehement opposition. Of course, the progress of social reform by means of education and social propaganda is the ideal method, but it will take years before the ignorant masses can be made to realise the evils of early marriages,

and acquire the courage to break off the shackles of immemorial custom. It is time to make a beginning by fixing the ages of the marriage of boys and girls at 16 and 12 respectively. Many native states have already taken steps in this direction, and the row that was kicked up there in the beginning has gradually cooled down.

Written Statement, dated the 13th August 1928, of Mr. MORARJI R. DESAI, B.A., District Deputy Collector, Godhra.

1. There is no dissatisfaction among the general public as the general mass of people knows very little about this law.

2.(a) A girl of fourteen years of age cannot under ordinary circumstances be said to have attained maturity. She would not understand many things and will have very little experience of the world. Her consent can therefore be obtained by a person who wants to seduce her by fraud, or temptation or some such means very easily. Such consent would however allow the accused person to escape punishment under the law as it stands at present. In my opinion the Age of Consent ought to be raised to 17 or 18 as regards unmarried girls.

(b) As regards married people, the Age of Consent has practically no effect. The only way to prevent sexual intercourse between a married girl of a tender age and her husband is to declare all marriages under a certain age illegal and penal. Unless marriages between girls of less than 16 years of age and men of less than 21 years of age are prevented, the law of Age of Consent will be practically useless in such cases as such offences cannot be expected to be brought to light. I would therefore strongly suggest the prevention of child marriages by penalising them by legislation.

3. Though the crimes of rape and seduction are not very frequent, their number cannot be called insignificant. I have noticed that many of such cases do not come to light mainly because it is very difficult to prove such cases. The only measure that can be successful in making this law effective would be the spread of education amongst the illiterate and backward masses. It is mainly on account of ignorance and illiteracy that such offences do not come to light.

4. This has practically no better effect whatsoever for the reasons given in paragraph 2 (b).

5. 14 is the usual age at which girls attain puberty in Gujarat. It differs very little in different communities.

6. Cohabitation (1) before puberty and (2) before the girl completes 13 years is not very common in these parts. Cohabitation soon after puberty is however very common. Such cases do not come to Court.

7. The practice of the early consummation of marriage before or at puberty is not on account of religious injunction in my opinion. Hinduism has nowhere given sanction to this criminal custom. It has on the contrary laid down that girls ought not to be married before attaining puberty. This is what I gathered in a discussion with some orthodox pandits. It is an evil custom which came into existence only on account of illiteracy and ignorance of true religion and health laws.

8. This ceremony is not known to me.

9. The attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. At present a girl generally attains puberty at 14. Every person who has eyes to see can easily observe that a girl is not much developed at that age. Girls attain puberty at an early age as they hear talks about marriage and sexual intercourse from their young married friends and as they are married early and are reminded of sexual intercourse every moment. If child marriages are abolished I am sure girls will not generally attain puberty before 16.

I consider that a girl's physical development can be considered to be enough to justify consummation of marriage between the age of 16 and 18. No girl under 16 can be considered to be sufficiently developed.

10. In my opinion 17 or 18 ought to be fixed as the Age of Consent for unmarried girls.

11. I have seen many cases in which cohabitation before full physical development of a girl resulted in marrying all further development and ruining her health entirely. The progeny in such cases is generally very weak and dull.

12. Early consummation and early maternity are mainly responsible for high maternal and infantile mortality and for the generally weak constitutions of Indians.

13. The amendment of the law in 1925 has very little effect.

14. Ignorant women do favour early consummation of marriage but the educated ones dislike it intensely.

15—16. No.

17—18. I would certainly separate extra-marital and marital offences. I see no meaning in punishing marital offences as long as child marriages are not made penal.

19. I cannot suggest just now as I have had very little time to think over this question.

20. Penal legislation fixing a higher Age of Consent can never be more effective than legislation fixing the minimum age of marriage. The latter kind of legislation alone can be effective in such matters and is in consonance with public opinion in this part of the country.

21. I am definitely of opinion that the object in view can be secured quickly and effectively by strengthening the penal law. Progress of social reform can effect some changes very slowly. I do not think progress of social reform by itself can be trusted to secure this object in view. It must be aided by penal legislation.

Written Statement, dated the 13th August 1928, of Dewan Bahadur THAKORRAM KAPILRAM, C.I.E., LL.B., Surat.

1. I cannot say, there is dissatisfaction with the state of law as to the Age of Consent; except among the thoughtful educated section. It is a great pity that while law for purposes of civil rights and obligations and liabilities and responsibilities should consider a female incompetent to give consent until she has completed her eighteenth year, it should be so lax that an inexperienced girl of the bare age of twelve can be considered competent to surrender her chastity. The fact that there is no dissatisfaction is a reason for the legislature to make a move forward rather than against it. People are indifferent to the grave danger to the physical well being and sound moral tone of the Society and hence they do not feel any dissatisfaction.

2. I can conceive of no sound reason for retaining the present Age of Consent. All the orthodox Shastrie's view which were put forward when the first Age of Consent Bill was on the legislative anvil about forty years ago may be as good to-day as they were; but the step forward which was then taken by the Government of Lord Lansdown has not convulsed the Hindu Society or brought it to the brink of damnation as it was then predicted. Forty years' experience must teach us that society has further advanced and a further protection is needed. With freer movements of the female population, with more girls attending schools and colleges and with the increase in the opportunities of the mixing of the two sexes, the age-limit must be raised. The girls ought to be clothed with further protection. In the case of kidnapping and trading in prostitution, we have been raising the limit fixed, when the Indian Penal Code was enacted and there are no considerations which justify us in denying the protection in the case of rapes.

3. I consider that from the few cases that come up before courts of law, seduction, and rapes outside marriage are of frequent occurrence. The poor labouring class are peculiarly exposed to this sort of danger. The low opinion in which society holds them adds insult to injury; the gibes and the jeering to which a female placed in such circumstances is exposed are serious impediments to their getting any justice. The indelicate position in the box to which they are reduced is bound to make them most unwilling to answer all the detailed cross-examination to which they are exposed. People are most unwilling to accept that a female could be an unwilling party to the indecent attack. The further difficulty of fixing age of 12, 13 and 14 is, in the absence of very clear documentary evidence in the way of successful prosecution. If the age-limit at least in the cases outside marital state is taken beyond the present ages, no one need object.

4. As the legislation is so recent, it can not be asserted that it has prevented cohabitation of married girls with their husbands but after the legislation grows in years, the indirect result will be to bring about the desired end, in all the three directions. I would no doubt put it on a parallel line with rapes outside marital connection. The disparity in sentence in treating the one offence and the other, is so great that so far as legislation is expected to achieve and yield any immediate results, it has failed to be effective. Rape is punished with imprisonment which may extend to ten years, while rape with his own wife is made punishable with two years only. Both the stranger and husband are equal sinners so far as society at large is concerned. A husband should have no more right to shatter permanently the physical health of one who happens to be his wife. A single act of cohabitation with immature and physically unfit girls is equally baneful to bodily culture and development, whether it be by the husband or by a stranger and I see no justification from the nation building point of view, why legislature should set up a wrong ideal before a husband by allowing him to believe that he is a lesser sinner against the society than the stranger, both are wronging the nation in an equal degree. The husband is in no sense a benefactor of the nation by seducing his wife at a tender age.

5. The question is more for the medical practitioners than a layman to answer. But generally girls begin to menstruate after they attain thirteen years of age or fourteen.

I have not collected statistics but I consider that it would be so.

6. I think that in many cases people do not wait till puberty. With advance of education, I consider that people have come to realise that early consummation is not beneficial for the girl or for the progeny. But it is different when the husband is elderly or has married a second time. Many considerations, such as social inconveniences of cooking or bringing up of infants left by predeceased wife and the like are allowed to prevail.

Such cases do not come to a court at all.

7. I do not attribute the practice to any religious notions at all. At one time menstruation after marriage was looked upon with such affected horror that marriages used to be celebrated before the likelihood of menstruation appearing, i.e., at the latest at the age of 11 calculated from the time of impregnation. But gradually it is disappearing. I attribute the practice to a wrong association of ideas, a false estimate of a girl's propensities and encouragement by parental relations of the husband and a desire to perpetuate one's line as early as can be.

I cannot recall the old Sanskrit couplets in which permanent damnation is hurled on the parents in cases of menstruation appearing in the parental home but the penalty was and is a mild one always ministering to the pockets of the priest.

8. The ceremony of *Ana* the first sending the daughter at her husband's is becoming rarer. But it is, in its pristine strictness and vigour still being observed in certain castes. It precedes the period of menstruation.

9. I do not consider the appearance of menses is any indication of fitness of the girl to undertake marital connection without affecting her physical

health. Much should depend on individual physical condition of health. An apparently healthy state is very often followed by early child birth and immediate collapse of health and physical wreckage I would think a medical certificate certifying sufficient maturity and development to undertake without risk or with safety to the person, would be the only rational basis; any other basis of arbitrarily fixing lapse of certain years after the regular appearances of signs of puberty would not be sure or sound.

10. In India except in cases of girls who have received sound education, it is not easy to come across girls who regulate their consent to cohabitation by considerations of consequences. There is no intelligent perception of the results but I would place the age between 16 and 18.

11. I have been an observer by habit and though it is not possible to give details of such cases, all I can say is that I have noticed with considerable mental pain and agony the physical deterioration which is overcoming the race. The sickly appearance, the burdensomeness of a troublesome child, the physical breakdown and early and premature aged worn-out looks are stamped on the faces of a considerable percentage of girls who before they entered into the condition of matrimony and motherhood had healthy sprightly eager look with interest in the surroundings and with capacity to enjoy. Peevishness takes the place of cheery nature; a lack of interest, total incapacity to enjoy sweets of life, a woe-begone look; there are the characteristics of every woman who is forced in to early consummation.

12. What has been stated above will indicate with pretty clearness what my answer to this question is. I do most unmistakably believe that premature cohabitation plays the part of canker eating away all the vitals of the better half. The physical weaklings add to the volume of infantile mortality and consumption and other disorders bring about the maternal mortality. Even if the weakling survives and attains a man's estate, he in his turn bequeaths to the country a race which is intellectually and physically poorer.

13. I cannot answer in the affirmative except that educated people who take interest in such questions of social reform have urged a further raising of the age.

14. Yes. I think so. They are possibly the greatest sinners against their country. Elderly women of the house are not very happy till they see with their eyes the beatific vision and their salvation in the children of their children.

15. In almost all cases, there is considerable difficulty felt and whenever an offence happens to have to be decided on the age, invariably protection fails. The birth registers do not enter names as generally no names are given to the child as soon as it is born. The doctor's opinion also is discounted by admissions they have to make of exceptional cases referred to in medical treatises as signs indicative of age. Ignorant parents have no idea of ages of their several children and a mess is very often made by them in the hands of a lawyer. Medical science has not developed to such an extent that a doctor can swear what exactly the age of a person is. The difficulty can be minimized if birth registers are checked when the child is vaccinated and a remark is required to be made by the vaccinator stating the name of the child in the birth register and in the vaccinator's register to enter from the birth register the date of the child vaccinated. At present columns only indicating under certain months, years, etc., are kept and that too not very regularly. The law should make these registers *prima facie* correct as a presumption, leaving the party prosecuted to prove otherwise. The protection against the devastating effect on society as a whole being the main motive, the burden of proving the contrary can very well be placed on the accused as is done in such enactments.

16. I do not believe so, as fourteen limit is equally difficult to establish.

17—18. I have indicated my opinion on the point above and I do not think I should take up space and time in attempting to answer it over again. I am emphatically of opinion that a husband, the sooner he is made to realise that he is not a *persona-a-grata* to be favourably treated, the better it

will be for the good of the society. Let him feel that he is, from the race point of view, as much guilty and deserves to be equally if not more severely punished as an ordinary person ravishing the chastity of a stranger and everything will conduce to the improvement of the race's physical culture, development and vitality. Let him feel that he occupies a privileged position so far as his wife is concerned, that law encourages him by differentiation and leniency that he can ruin his wife's health and happiness with impunity, the country is doomed.

19. The safeguards are more than sufficient and do not call for any alteration in the direction of stringency or slackening. There has been so few cases that one cannot say the evil indicated in the question on either side can be said to be existing.

20. I am afraid that mere raising of the Age of Consent will not be so effective as stopping the marriage before statutory marriage age. Both coupled together would be far more effective than simply regulating by statute, one or the other. People on my side, I think, will be for the mean.

21. Both *pari passu*.

Written Statement, dated the 13th August 1928, of Mr. N. V. DESAI, LL.B., President, Bar Association, Broach.

1. The masses have no opinion in the matter in the absence of any educative propaganda on the subject. In fact they have hardly any idea as to the Age of Consent and but for the presumption of law, *viz.*, "ignorance of law excuses none", it would be impossible to prove the *actus reus* of knowledge on the part of a culprit. Amongst the educated people, I feel that there is a feeling of dissatisfaction on the point that the Age of Consent, outside the marital state is not more than 14. The force of opinion in this quarter is that it can be safely raised to 16.

2. (1) Within the marital state, the Age of Consent should not be raised beyond 13, looking to the circumstances under which the society, split up into various castes and sub-castes, has to labour these days. While in some castes there is an influx of marriageable girls, in some the scarcity is terrible. Marriages being not permitted outside castes, sub-castes and in some cases even outside the folds in sub-castes, wherein widow remarriage is strictly prohibited, males are unable to think of a married life, either because of the scarcity of brides or because of the large price they have to pay for them, under existing customs. Under such conditions even the principle of demand and supply does not regulate the question and the result is that the male members of such castes have to wait to a fairly advanced age before they can manage to marry. The age of the marriageable girls being restricted to an age under puberty, the males have to take up girls of 10 to 13 for their marriages, even at their advanced ages when alone they can afford a married life. Having married under these disabilities, a large number of these husbands, lost the self-control, and the marriage is invariably consumed before the wife is 14 if not earlier. While the desire of every lover of the country, having a sense of humanity, would be that this should not be, yet if the matter is penalised, in practice it will lead to horrible lying on the question of the age of a girl and will lead to the prosecution of several people who are really not deserving of a jail life and who can be respectable citizens otherwise. With the disappearance of castes and the prevalence of widow remarriage a time might come when the question can be rightly and profitably taken up. At the present date, it will be desirable to leave the Age of Consent as it is, within the marital state.

(2) As stated in my reply to question 1, an advance can be profitably made in the Age of Consent, outside the marital state, by raising the age to 16. It is impossible to imagine that a girl under 16, is really able to understand the risk she is entailing upon herself by yielding to the temptations that are held out to her, by "Society friends", who are out to inflict on her

irreparable loss of social happiness and prestige, and in several cases transmit to her incurable diseases, which can also ruin her unsuspecting husband and her progeny to come thereafter. Again a girl under 16 is hardly able to prove threat which is meted out to her, by her ravisher, in the sense in which it ought to be proved within the meaning of Section 3, Indian Evidence Act. Everything considered, it will be quite safe to raise the Age of Consent, outside marital state to 16 years.

3. The crimes of seduction or rape may not be *frequent* in this part of the country, but they can be and ought to be certainly reduced to a material extent. Crimes of seduction are comparatively larger than those of rape in this part of the country and I am afraid like several places in Kathiawar, even in this district and other districts of Gujarat, a class of people carrying on a traffic in seduced girls, is coming into existence and organizing itself. So many crimes of this nature go undetected and when any prosecutions of cheating are launched, because of the fact that these girls are ultimately palmed off to half witted husbands on false pretences, they are compounded, as the offence of cheating is now made compoundable with the permission of the courts concerned. After everything is considered from a business point of view, the traffic is found to be pecuniarily profitable by the rogues concerned therein, and consequently they carry it on with impudence.

To the second part of the question, the answer must be in the negative. As a matter of fact the new legislation is not known to the masses, in the absence of any educative propaganda on the subject, and it is extremely doubtful, even if such knowledge, by itself, will make any reduction in the number of these cases.

The measures, I would suggest, though I am doubtful as to their ultimate success, are as under :—

- (a) Educative propaganda as to the existing state of law.
- (b) Creation of social service bodies in villages through the District and Taluka Local Boards, to educate and cultivate opinion on the subject in villages and to create a spirit to bring light offences of this kind. The spirit should be supported by suitable rewards in fit cases.
- (c) Special rewards be offered to the Police who bring to light or prevent offences of this kind.
- (d) Deterrent sentences in law courts.
- (e) By making cases of cheating arising in cases of "seduced girls" uncompoundable.

4. (1—3) No.

I would suggest, measures on the lines suggested in my reply to question No. 3, *vide* concluding remarks contained in (A to E).

5. Between 13 and 14 generally yes. Amongst the agricultural classes, who actually do the field work the age may be put down as between 14 and 15. This would include the Suni Boras and Bhils and Kolis of Broach District. Amongst the Bhils of Panchmahals the age can be safely put down as between 14 and 15 generally speaking.

6. Generally speaking the reply must be given in the negative, but instances may not be wanting amongst some classes of Brabmins, amongst whom marriages take place between couples labouring under a marked disparity of age between the husband and the wife. The price these people have to pay for a bride is anything between 2 to 5 thousand rupees, a sum which an individual of the community is unable to save, or more properly speaking unable to raise, before he attains a fairly advanced age—anything between 30 to 50 years. The bride selected, even then, varies in age, only from three to ten years unless the bridegroom is conveniently blind to the caste of the girl and manages to draw upon the business of somebody dealing in girls, who are brought up for the traffic, and who by associations with the people who brought them up, themselves become participants in the crimes of cheating and thefts, to be perpetrated in regard to

the property of the half-witted, or the passion blind husband, when they marry only for a nefarious purpose, as a result of a well-worked out conspiracy. Instances though few, are not absent in some of the Bania castes, residing even in town and cities. With the disparity in age, the husband takes the child-wife to his home, under "the make-belief" to train her up according to his requirements, soon after marriage, and by the time the girl is 12 or 13, he feels he has waited too long for matrimonial happiness and begins to consummate the marriage, with results too obvious.

Thus, while the reply to the question as it stands, worded, ought to be in the negative, it must be read subject to the observations given above.

Such cases, very rarely come to Court, and the Hindu method of disposing off the dead husband—scientifically the best method for the purpose—facilitates the possibility of every chance of detection of such cases. I have however a clear case on the point within my knowledge and I will quote the same under question 11.

7. I know of none and there can be none. A belief however exists in some Brahmin and other castes that the maidenhood of a girl must be destroyed before she reaches the stage of pollution, by reaching the age of menstruation. The belief has its origin in a debased custom, rather than any religious injunction, and it must also be admitted that such a belief now exists in very few cases in this part of the country.

The remaining portion of the question need not be answered.

8. The question can be fairly answered in the negative, as far as Gujarat is concerned. Beyond getting an auspicious date fixed for the bride to retire with her husband for the consummation of the marriage there is no ceremony, known as "gauna" or "garbhadan ceremony" existing in any caste generally speaking. The ceremony is known to exist amongst the Daxinis in some cases and where it does, the very publicity attaching the ceremony, makes it necessary for the parties to see that the girl has attained puberty and is otherwise fit physically, for the consummation of marriage. Making the ceremony compulsory by some method, amongst all the Hindu communities, may prove itself a beneficial measure in preventing some of the great evils the bill in question seeks to remove.

9. The first part of the question must be answered in the negative. Puberty can never be synonymous with physical maturity. It is only a sign of maturity. The 2nd portion of the question is more for a medical man to answer in every individual case but generally speaking the age can be safely put down at 16 years.

10. 16 years.

11. Yes. The case of *Imperator vs. Chunilal Nagindas of Ankleshwar*, disposed of by the Sessions Court, Branch, about 16 years back is an instance of its kind. The accused was a respectable intelligent Bania. The case was sent up under Section 304A, Indian Penal Code, as the Age of Consent in the case of a husband under section 375, Indian Penal Code, in those days was 12 years. The accused (husband) had cohabitation with his wife and because of the absence of physical maturity, the vagina was torn leading to heavy loss of blood from the parts. The hymen was also ruptured and the girl becoming unconscious very soon, died within a few hours after the very first attempt at cohabitation. Some of the signs of puberty were visible—particularly the pubic hair. The accused was convicted under Section 304A and sentenced to 6 weeks simple imprisonment, so far as I remember. The case had gone to the Hon'ble High Court, Bombay, in appeal, wherein also conviction was sustained and the sentence confirmed. The case can be had from the record of the Sessions Court, Branch.

12. The question as a whole must be answered in the affirmative. The baby-born nation the country is building up as a result of early consummation of marriage and early maternity, is in itself a serious handicap on the intellectual and physical progress of the people. The short sighted boys and girls, youngsters with pigeon-shaped chests and the lot of them representing a miserable specimen of humanity, compared with the powerful men and women

they have to compete in world competition, are the only ridiculous gifts to a country labouring under the disabilities, suggested by the question under reply. To solve the problem of over-population in some of the countries in Europe, even the church people came forward to preach, "family prudence", as against the very Christian dogma of "to live and multiply" and we have seen scores of neo-malthusian institutions springing up all over Europe. Why should therefore there be the absence of the same spirit in India, where early maternity is ready destroying the very manhood of the country rendering her unfit for anything of world competition, much more so for self-Government, which presupposes power of self-defence. No doubt therefore, when early consummation and early maternity be prevented by legislation, as far as possible it is absolutely necessary that a vigorous propaganda for "family prudence" be started side by side, if not in place of "Baby weeks".

13. In my reply to question No. 1, I have stated that the masses are ignorant as to the very legislation itself. Hence the question can be safely treated as redundant. But speaking of the layman's feeling on the question one can say that the answer in regard to marital cases will be in the negative, while in regard to non-marital cases will be in the affirmative. Educated classes and advanced communities would favour the idea of raising the Age of Consent of non-marital cases to 16 years.

14. This question can only be answered with reference to various castes and communities—castes which have an idea of a responsible life in regard to their children, can boast of its women, who do not favour early consummation of marriage for their children. Women of some castes who do not feel any such responsibility and who are anxious to see their daughters becoming mothers as early as possible, least their daughters' husbands might marry again for children, are always anxious for an early consummation of marriage. It can however be said, that the opinion is getting against early consummation, but actual opposition around, generally speaking, may yet take years to develop. Legislation may therefore be useful in this quarter, side by side with an educative propaganda, provided the legislation is worked out in slow degrees from time to time, without running the risk of sending to jail desirable citizens, who only yield to a human passion, under social tyranny.

15. Yes. Difficulty is experienced very often. The birth and death register in villages is no guide on the point, looking to the imperfect manner in which it has been kept, under the supposed supervision of the Town Municipalities and village Police Patels. In so many cases the question ultimately comes to be decided by a hospital or a dispensary assistant, now dignified by the term a medical officer whose study and experience in the matter is hardly perfect. This being so his opinion is only what it can be and the matter is ultimately decided by the judge and the assessors or the jury on the materials available. While I am not prepared to say that there is anything like miscarriage of justice on this account, I do believe that the evidence on the point can yet be made more perfect and almost beyond any doubt. I can suggest the following measures:—

- (a) The authorities should be directed to see that the children are named in the birth and death registers. This may necessitate an inquiry on the part of the authorities, after a month of the birth of a child to know and note down its name. This will frustrate any attempt to palm off an earlier girl child for her younger sister.
- (b) The examination of the girl for the determination of her age ought to be by the Civil Surgeon only, for the purposes mentioned in the bill, to reduce the chance of a wrong expert opinion to a minimum.

16. No. Again in view of my reply above as to the undesirability of raising the Age of Consent in marital cases, at present, the question cannot arise.

17. Certainly. For extra-marital offences the present punishment is proper. For marital offences, I would propose three years' imprisonment maximum. The imprisonment *must be simple* the reason being that the accused himself is the chief sufferer in the matter and that the parents of the girl being not alive to their duty towards their child, he should not be subjected to the rigours of a jail life, for falling a prey to human passions and weakness. The punishment should be intended merely for the education of the masses and for creating a feeling of self-control in the society including the accused concerned.

18. I would suggest that marital offences, should be made triable by a first class Magistrate but with the aid of jurors. This would humiliate the accused socially, which would be a better curative punishment to the accused and a great education to the public. The method will in a way be an educative propaganda for the public. The procedure should be the warrant case procedure. The trial should be given a wider publicity and as large an audience as the Court room can accommodate should be attracted to these trials. The publicity can be given by notices on the Court Notice Board and on or round about the residence of the accused. The suggestion is merely made with a view to educate the public on the subject. It would be still better for the Magistrate to take up the cases as near as possible to the scene of the offence, which would be very often the residence of the accused.

19. *Vide* my suggestions A to E in my reply to question No. 3.

20. No. Fixing the minimum age of marriage will be certainly mere effective. This opinion will be more in consonance with the public opinion. It is besides easier to postpone marriage than consummation.

21. I would certainly prefer the latter, at the same time I would like to see the strengthening of the penal law, side by side, at proper intervals to eradicate the evils entirely in course of time. It may be that the necessary education may render the legislation futile; but even then legislation is always a desirable remedy.

**Written Statement, dated the 13th August 1928, of Mr. J. N. BHATT,
Judge, Small Causes Court, Ahmedabad.**

1. There is dissatisfaction in the educated classes including social reformers that the age-limit is too little.

2. An advance is necessary.

(1) Because the development is mostly imperfect due to poverty of the country. Early child bearing brings high death rate both of mothers and infants and still born progeny (*Vide* Legislative Assembly debates 1922, Vol. II, Part III, page 2650, Rai Bahadur Sohanlal's speech).

3. No. They are not frequent but occasional only.

I think the legal increase has succeeded in reducing and to some extent prevented the cases of rape outside marital state and within, by producing a consciousness of responsibility; also in reducing cases of improper seduction.

4. Yes. The marriages are generally delayed and there is a general tendency to increase the limit to 16 years.

5. The girls attain puberty according to their health; generally between the ages of 13 to 15 more or less variable in different castes and communities.

6. (1) No.

(2) Often after puberty.

For all practical purposes every woman is in the married state at or immediately after puberty.

(3) Rarely. But no such cases come to the Court.

7. I believe religious injunction does not direct but indirectly promotes early consummation inasmuch as it directs early marriages.

*Id*e for instance Manusmriti Adhyaya 9, Verse 94.

See also Patashar Dharma Sastha, Bombay Sanskrit Series, No. 48, pages 69, 70.

The definition of a maiden (Kanya) also is such as to enjoin early marriages. (For original texts see accompaniment).

8. No.

9. No. At least the age of the girl should be 16 years with good health.

10. After 18 but even at this age a girl may not be competent to have an intelligent realization of consequences. That would depend on the education received. But 18 should be taken to be the age qualifying a girl for consent as in the cases of all majors so far as third persons are concerned.

11. No record is kept.

12. Yes.

13. Yes. Among educated classes who are also in a position to wield some influence over their surroundings.

14. No, not as a rule.

15. The difference between marital and seduction age is nominal. It ought to be greater.

16. Yes.

17. Yes. The husband be punished more leniently than the third person.

18-19. No.

20. The more effective would be legislation fixing the minimum age of marriage. But that would not be in consonance with the majority of public opinion having regard to the fact that the Hindu Shahstras enjoin early marriages and the orthodox population is large. Therefore penal legislation fixing a higher age of consent would be better.

21. The object in view will be better secured by penal law than by the progress of social reform which is very slow.

Written Statement, dated the 13th August 1928, of Mir GULAM KHWAJA *alias* CHHOTA SAHEB ZULFICARALI, Ex-Vice-President, Broach Municipality.

1. Yes, I am inclined to believe that there is a general feeling of dissatisfaction with the state of law, as to the age of consent, in so far as it relates to extra-marital cases, but an overwhelming majority is evidently satisfied with the law as amended in 1925, in so far as it relates to marital cases.

2. The circumstances which in my humble opinion justify retaining the law of the age of consent as it is, with regard to marital cases, are apparent that the orthodox section, which is overwhelmingly large, has not been sufficiently roused and, unless legislation fixing a minimum age of marriage for girls is undertaken, which I fear touches at the very root of the socio-religious life of a people, will not look with favour any advance in penal legislation affecting the socio-religious life and institutions of the people.

On the other hand, an advance on the present law as to the age of consent outside the marital state, by raising still further the age of consent would in all probability be instrumental in raising the standard of morality.

3. No definite answer in the affirmative or negative would in my opinion help to determine the question, but I am inclined to believe that crimes of seduction or rape outside marital state are frequent in urban areas than in rural, and it is more marked in big and industrial cities, the reason for holding this view is that the moral standard of both sexes in rural areas is higher than in urban and big cities. The frequency of the crime in big

cities can be ascribed to economic causes and the drunk evil. Of course this happens in the lower classes of Society.

The amendment of the law made in 1925, raising the age of consent to 14 years, has not improved matters since the law and the consequences of breaking the law are understood and appeal only to the educated section of the community.

4. No. The law as it stands even though amended in 1925 has not been very effective in protecting married girls against cohabitation with husbands within the prescribed age-limit, but if anything has been done in that direction, it is by the stimulating of public opinion through the agency of social reform movements vigorously advocated by the ardent social reformers; and partly due to the spread of education, during the last half century; among the higher classes among whom the early consummation of child marriage is at the present day not so common as it was fifty years ago.

Now to make the law as to the age of consent more effective by further raising the age of consent in the case of married girls would in my opinion be of very little help inasmuch as the question of marriage remains untouched; therefore I am inclined to believe that penal legislation fixing even a higher age of consent in marital cases would be far less effective without legislation fixing a minimum age of marriage. I would therefore respectfully propose to raise the age of consent in marital cases to 14, on the one hand, and legislation fixing the minimum age for marriage at 13.

5. The usual age at which girls attain puberty in this part of the country may be taken to be at from 12 to 14 years of age. Yes. The difference is marked with respect to girls of different castes, communities and classes of Society. It is due more or less, to the influence of climate upon the character of a nation, though at times exaggerated, but it is undoubtedly of great importance. The geographical position of a country also has its influence upon the character of the inhabitants. The influence of wealth and poverty is also no less important in the development of the physical qualities of a nation be they of any community, caste, or creed. The girls of the wealthier classes of Society, born of a union of healthy parents usually attain puberty at the above age, but girls born of parents in humbler stations, ill-fed, ill-clothed, and brought up in insanitary conditions, show signs of arriving at puberty at an advanced age of sixteen and even seventeen.

6. As far as my experience goes, I think that cohabitation is not common in this part of the country among any class or community—

(1) Before puberty. But barring some advanced communities cohabitation may be common.

(2) Soon after puberty. Very very exceptional.

(3) Before the girl completes 13 years.

9. No. The attainment of puberty is not in my opinion a sufficient indication of physical maturity to justify consummation of marriage. The age at which a girl attains puberty in this part of the country is generally at from 12 to 14 years of age. Therefore, the age of a girl not under 15 years, if she has attained puberty at 12 or 13 years of age, would be considered enough for purposes of consummation without injury to her own health but it may prove injurious in exceptional cases of maternity where the physical constitution of the body be lean.

Many a girl of fourteen or fifteen feels that a young man of eighteen or twenty has inspired in her a love and that she cannot live without him, and she may consider marriage at this early age. Marriage before fourteen years of age at the present day is considered premature, and though premature marriage may not be considered advantageous either for the individual or for the race it must not be lost sight of that this question has to be considered from the stand-point of the several classes of people and not from the stand-point of one particular class or classes of society. It is not only a question of physical maturity. The temperament of the individual must be taken into account. No less responsible is the economic condition. The

irresistible pressure of circumstances makes it incumbent upon parties to consent to early consummation of marriage. There are even advantages of marrying fairly early in life, for girls who have been out in the business world for the sake of subsistence will most probably look upon the care of a home and children as a relief from the monotonous drudgery of their uneasy existence. Under the circumstances full fifteen years of age is considered fairly justifiable.

10. At the age of sixteen or seventeen.

12. Yes, the woman is the mother of the race and though we may not expect every woman to be a physical mother yet we would expect her to nourish her children in order to make them physically fit for the hard life. Being therefore a nourisher of the race, she not only provides the health and the strength but also is a source of inspiration to them mentally. Early consummation and early maternity does greatly hamper the intellectual progress of girls for marriage at an early age means bidding adieu to school and other pleasures of girlhood which they are obliged to forego. If they could have their freedom a little longer, until natural instincts lead them to think of marriage, it would go a great way in building a healthy constitution, physically and mentally, which may eventually prove to be of great good to the society and race.

13. Yes, generally with regard to extra-marital cases but not so with regard to marital cases. As in Politics every question has two sides and is looked at in different ways by the two great parties the conservatives and liberals in England or the extremists and moderates in India so is also with regard to social problems which are considered in different ways by different parties, the orthodox and the progressives. The orthodox fear that any change will do more harm than good, the progressives stand for reform, change and progress. The orthodox also fear that the progressives in too great a hurry to make progress may even destroy many good social institutions with the bad. Under the circumstances public opinion is divided.

14. Not generally.

Women of the advanced higher classes, do not now favour early consummation, more particularly the wealthier class, but the poor classes, at times under force of circumstances, for reasons economic and domestic, still pursue the course.

17. Yes, the law as it stands is confounding, and would be made more clear and understandable if the marital and extra-marital offences were to be separated as different offences. The one relates and punishes an offender, in marital cases, who believes himself to be innocent, as he really is according to the prevailing customs of his society or community, but is guilty in law only, for having an intercourse with his own wife under a certain age which the law forbids. He will be dragged like an ordinary criminal, before an ordinary court of law, will stand a public trial, not without subjecting himself to a critical examination and cross examination of a clever and witty lawyer. The wife also is in court all the time subjected to indignities of all sorts, and if a sentence is passed on the husband the whole domestic happiness is destroyed, leaving the whole home weeping. Marriage solemnized for the sake of happiness becomes a curse and the whole social institution of marriage which is at once a sacred contract between man and woman becomes a heinous offence.

On the other hand, extra-marital offences are quite distinct and require to be treated separately for obvious reasons, the offence is against morals, against society, and against humanity. The man committing the crime is something more than an ordinary criminal, who shall not enlist the sympathy of any man or society worth the name of decency.

The maximum punishment prescribed in the law as it is, it seems to me quite sufficient for extra-marital offences, but for reasons above cited, the maximum punishment for marital cases requires modification—the maximum punishment to be reduced to a nominal sentence, by inflicting fine up to a

maximum of one thousand or in default a sentence of one year's simple imprisonment

20. In any case penal legislation will not be able to deal with great barriers which have their roots deep in the social organisation. This can only be dealt with by the spread of education, with an impassioned and intelligent appeal to the whole people, which I humbly think will produce a general awakening with a general determination to think and act. However, in order to answer this particular question, my personal opinion is that penal legislation fixing a higher age of consent for marital cases is not likely to prove more effectual than legislation fixing a minimum age of marriage. The latter would be more in consonance with the opinion of a large section of the educated classes of almost all classes and communities, who may be termed liberals or progressive.

21. My personal opinion is that in matters affecting the socio-religious life of a people, especially with regard to an institution like marriage, it is much more safe to rely on the progress of social reform by means of education and persuasion. There are of course two methods, legislation and persuasion. Of these legislation is simpler and swifter. However, social legislation must always be slow and cautious. It may be resorted to when methods of persuasion fail, but a review of progress made by the social reform movement from its commencement to the present day in the shape of conferences and associations bear ample testimony of the successes achieved. At the first sight, it may look discouraging but none the less, the progress made is solid. Is it not a proof that with the advance of education, there has been great intellectual progress, and the need for social reform is now more generally recognised than ever before? It may also be pointed out that the average age of marriage has risen somewhat, though the ideal has not yet been reached. The irresistible force of circumstances will slowly but surely bring about the change. I, therefore, cannot resist the conclusion, that however discouraging the features of our slow progress may have been, a vast opportunity lies for the social reformers to educate the people. Recognising the deficiencies of the past, we must make our future action more spontaneous and intelligent. However, any reform must work along lines natural to the country and our national characteristics. I am inclined to believe, that our whole society is not evil, nor are all our social customs. Hasty legislation may yet be a greater evil than the original evil.

Written Statement of MARGARET MacKELLAR, Mission Hospital, Neemuch, C. I.

Regarding the age of consent committee's questionnaire I regret that I have not been able to give the time and thought to answering the questionnaire which the subject merits.

Many of the questions cannot be answered by European women, as they would have to get their information from Indians and no Indian would want to admit that he was a party to what is a grave blot on social conditions in this land—the disparity in the ages of many of the husbands and wives.

A nation's greatness depends upon social conditions and until wholesome, pure-minded men arise to right the wrongs of Indian girls and women, there is little that foreigners can do, much as they would like, to help in the uplift of India.

I give below my answers to a few of the questions asked.

9. I would say that the girl should not be married or if married should not cohabit with her husband for four years after puberty.

Reasons.—The girl at puberty is not a woman—that is she has not attained full physical fitness to undertake child-bearing. Should the girl be unfortunate enough to be subjected to such an experience the extra strain on

nature exhausts her strength and as a result her health is undermined and she cannot live efficiently nor do her best for her offspring. How can she?

Puberty is but the first step—nature takes several years to complete her work.

Only men and women (not girls) who obey nature's laws can be endowed with health and happiness—nature punishes those who break her laws.

10. Sixteen or eighteen years.

11. Professionally I have seen girls who have been crippled for the rest of their lives by too early cohabitation.

In some cases the undeveloped parts have been torn badly—adhesions resulted and subsequent sterility followed.

Or if a girl did conceive at a tender age and was delivered of her offspring sometimes deformity of the pelvis followed and consequent sterility or if she did conceive again she had to be delivered by caesarean operation.

The practice of sexual intercourse with a girl of tender years of ten by full-grown man is brutal and when to the injury inflicted on the victim disease, e.g., syphilis or gonorrhœa is added it is diabolical.

12. Yes—emphatically. If not, how are we to account for the fact in India that there are some 7,000,000 fewer women and girls than men and boys, when in most countries where early marriages are not the custom there are more women and girls!

17. Punishment for the offence should be meted out to the guilty husband as severely as to any other man.

Why should a husband be privileged and shielded if he too has broken the law? Subsequent sufferings to the hopeless victim of such are nothing to them.

21. Until I see some appreciable speedy advance in the progress of social reform by means of education and social propaganda I would rigidly rely on the penal law to secure the object in view.

Written Statement, dated the 11th August 1928, of Mr. NADIRSHAH NASARWANJI MASTER, B.A., LL.B., Sessions Judge, East Khandesh, Jalgaon.

1. So far as I know there is no dissatisfaction with the state of law as to the age of consent as now contained in sections 375 and 376 of the Indian Penal Code.

2. I think it is now time to make an advance on the present law, under the following circumstances:—

(a) Before the year 1891 the age limit was only 10 and it was raised to 12 by Act X of 1891, as it was found in the case of Huree Mohan Mythee (18 Cal. 49) that this limit of age, i.e., 10 years favoured the premature consummation by adult husbands of marriages with children who had not reached the age of puberty and was in the unanimous opinion of the Medical Authorities, productive of grievous suffering and permanent injury to child-wives and of physical deterioration in the community to which they belonged.

(b) This age limit of 12 years has now been raised to 13 in the case of husband and to 14 in other cases by section 2 of Act XXXIX of 1925 which came into force on the 23rd of September 1925. The statement of objects and reasons to Bill No. 12 of 1924 are given at page 45, *Gazette of India*, Part V, 1924, and they are as follows: "Books of Medical Jurisprudence established the fact that the age of puberty in India is attained by a girl upon her reaching the age of 14. Even though puberty may be

reached at that age it is obvious that girls are unfit for sexual cohabitation till they are older and more developed in physique and strength. The appalling infant mortality in the country is partially ascribed to early marriages and the consummation which follows with immature girl. It is therefore not only for the protection of the minor girls as also for their progeny that the age of consent should be raised at least to 14 years."

- (c) The public commotion which attended the amendment Bill of 1891 was absent when the last advance was made in 1925. This no doubt shows that the present change in law has been placidly acquiesced in by the Indian Public. In advanced communities the age limit for marriages has already gone high up and the backward communities are gradually following the.

3. I am transferred to this District only recently but from the previous record of the Sessions cases disposed of by my predecessor I can say that the crimes of seduction or rape are not frequent in this part of the country. As regards the effect of the amendment contained in Act XXXIX of 1925 I should say that by Government Resolution No. 8975-11, dated the 27th August 1927, Home Department reports on the effect of the amendment of the law were called for from all the Sessions Judges in the Presidency and my predecessor Mr. Lokur while submitting his report in obedience to the said Resolution has stated that from 12th October 1925 (the day on which this District and Sessions Court was established) to the date of the Resolution, he tried only seven cases under section 376 of the Indian Penal Code and out of those seven cases in three cases the ages of victims were above 14 and in the remaining four they were below 12. In none of those cases the accused person was the husband of the woman concerned. After September 1927 till the day of this report only two cases under section 376, were tried, in both of which the ages of the victims were above 14 years. I am not therefore in a position to say definitely whether the amendment of the law made in 1925 raising the age of consent to 13 and 14 years succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. I should however like to observe that crimes of seduction or rape are generally hushed up by the parties concerned out of shame and a few of the offenders are brought to book when the matters reach the police. In view of the above facts I do not think I need say anything as regards the measures to be taken to make the law effective.

4. As no cases of rape by the husbands against their wives are committed within the last three years, it can be said that the amendment of 1925 raising the age of consent within the marital state of 13 years has been effective in protecting married girls against cohabitation with husbands within the prescribed age-limit. During the last 10 years the effect of epidemics like Plague, Cholera and Influenza in the country has served a great deal to put off marriages beyond the age of 13 among the educated classes and in communities where no remarriages are allowed. In the backward classes also child marriages are now being discouraged and ridiculed as an indirect result of their ambition to claim equal status in political life with advanced communities. The after-effects of the Great War on the money market and the impecunious state of the society in general have also led to put off early marriages. To make the amendment more effective I would rather prefer to put off the marriage beyond 15 than rely upon the postponement of consummation of marriage after the attainment of puberty as it would be very difficult to stimulate public opinion in that direction.

5. The age at which girls attain puberty in this part of the country varies between 13 to 16 in proportion to the breeding, culture and surroundings of the girl. In big cities and towns where population is thickly crowded, open air, fresh water and free exercise are denied to them and as the amenities of life are confined to household pleasures the attainment of puberty in their case is earlier than in the cases of those who have the benefits of the rural life.

6. In this part of the country cohabitation is common soon after puberty and not before unless the husband is an elderly man and the wife has not attained puberty at the age of 13 or 14. During the last 3 years no case has been committed where the husband of the girl cohabited with her before she completed 13 years.

7. It is laid down in Hindu Shastras that within 16 days of the attainment of the puberty the consummation ceremony should ordinarily be gone into. If any cohabitation takes place after puberty and before consummation ceremony it is considered as sin and the parties committing such sin are required to take prayaschitta (religious atonement). Some 10 years back it was the practice to excommunicate and ridicule the parents of the girl who attained puberty before her marriage. But when they realised the bad effects of the Influenza and Plague and other epidemics on early marriages they are conniving at the rules laid down in the Shastras and began to favour the idea of marriages at the age of puberty. This I think is a sufficient justification to make a further advance on the present law.

8. "Garbhadan" ceremony is usually performed in this part of the country amongst the Brahmins and other communities enjoined by Vedas. It is generally performed within 16 days from the attainment of puberty. This ceremony coincides with the consummation of marriage.

9. I do not consider that the attainment of puberty at the age of 13 is a sufficient indication of physical maturity to justify consummation of marriage. I should think that two years after puberty and at the age of 15 years a girl's physical development be considered to be enough to justify consummation without injury to her own health and that of her progeny.

10. At the age of 15 or 16 a girl in India will be competent to give an intelligent consent to cohabitation with due realisation of its consequences.

11. As an Assistant and Additional Sessions Judge and Sessions Judge I have tried cases under section 376, Indian Penal Code, in which cohabitation before puberty and after puberty but before full development of girls resulted in injury to their health and body. But without looking into record of the Sessions cases, I am not in a position to give the details of the age and the injuries sustained.

12. I do think that early consummation and early maternity is to a great extent responsible for high maternal and infantile mortality or for any other results vitally affecting the intellectual or physical progress of the people, though the general poverty, want of proper nourishment and sedentary habits may be the other causes for them.

13. So far as I know there has been no further development of public opinion in favour of any extension of the age of consent in marital and extra-marital cases since the amendment of law in 1925.

14. The woman folk in general being very fond of babies, they may be in favour of early consummation of marriages without knowing the bad effects attendant thereon.

15. In cases committed under sections 375 and 376, difficulties are at times experienced in determining the age of the girl when it is said that she is between 13 and 14 if raped by her husband and 14 and 15 when raped by others; but they are got over by examining a Medical Professioner and producing extracts from birth and death registers.

16. I do not think that if the age of consent is raised to 14 years or above the difficulties or margin of error in determining the age would be materially reduced or minimised. The difficulties that are now being experienced would also arise even if the age of consent is raised to any year.

17. I would separate extra-marital and marital offences into different offences. For the extra-marital offences I would suggest the same punishment as is provided by section 376, but for marital offences I think sentence of imprisonment of either description for two years with or without fine would not be too lenient.

18. If the accused person is the husband the offence is non-cognizable, bailable but non-compoundable and is made triable by the Court of Sessions, Chief Presidency Magistrate or District Magistrate under section 561 of the Criminal Procedure Code. If the accused is any other person the offence is cognizable, non-bailable and non-compoundable and is exclusively triable by the Court of Sessions and I do not wish to make any suggestion in the procedure of trial that is being already followed.

19. I would suggest that if the Police officer not below the rank of Deputy Superintendent of Police is authorised to conduct the investigation in such cases there are less chances of collusion to protect the offender or for improper prosecution or extortion.

20. I would prefer fixing the minimum age of marriage to higher age of consent for marital cases. I do not think that public would like to be penalised in both the cases.

21. I would prefer to rely on the strengthening of the penal law to secure the object in view rather than on the progress of social reform by means of education and social propaganda.

Written Statement of Mr. GULAM MAHOMED MUNSHI, Bar-at-Law, Public Prosecutor, Kathiawar Agency.

1. There is some dissatisfaction in the educated classes.

2-3. The protection given by section 375, Indian Penal Code, in the matter of age is not satisfactory. Age of 14 is not a good standard. At that age she is not intellectually in position to give a considered consent. The present law, though it is in advance on the old section, has not materially reduced the crime of rape. It is desirable to raise the age of consent in extra-marital cases of rape.

4. I have not come across a single case in my long career as Public Prosecutor of Kathiawar Agency, where a husband is prosecuted for rape on his wife. It is futile to expect prosecution of a husband, however high or low the age of consent by the wife be fixed. But still it is advisable to raise the age of consent by the wife to 15 years. It will act as a sort of check, though not quite effective. It will educate public opinion. Whatever age be fixed for consent of a wife, it will have a salutary effect. It will, to a certain extent, postpone the consummation of marriage. It will stimulate public opinion in that direction.

(1) I cannot suggest any measure which would be effective to prevent cohabitation with a wife of immature age. It is practically impossible for the legislative authority to adopt any measure which would be effective in preventing such cohabitation. One cannot expect any member of the family of the husband to launch a criminal case against the husband for breach of this provision of law. It would be most dangerous to authorize the Police to initiate a prosecution of this kind by making it a cognizable offence. Therefore the only remedy is to educate public opinion or to fix an age-limit for marriage.

5. It is generally at the age of 13 or 14 that a girl attains puberty in this part of the country. In rare cases it is attained even at 12. The general impression is that puberty is attained earlier in the classes which take meat diet than in those which do not.

6. (1) Cohabitation before puberty is permitted in some classes of Hindus, as I am informed, but it is decreasing.

(2) Cohabitation soon after puberty is common, but some do not permit it in their families till the girl is quite mature in age.

(3) Yes, in some cases.

I do not understand the real gist of the question—"Do any of these cases come to Court?" Of course, there are cases of rape, in which a girl is raped,

before or after she has attained puberty, that is, she gets menses. I am collecting statistics of cases of rape, conducted by me in the Court of Sessions during past few years showing the age, class, etc., etc., of the parties concerned and the decision of the Court. I shall send the statement when it is ready.

7. This question concerns the Hindu community only to my mind. There is no injunction in Islam to that effect, as far as I know. If there is, it is honoured more in breach. Musalman parents, as a rule, do not get their daughters married before 13 or 14. In several cases they are much older.

8. I understand that the ceremony of "Garbhadan" is common in the communities of the Brahmins and Nagars and some Banias also observe it. I am informed that it is held after the attainment of puberty and after consummation of marriage.

9. No, certainly not.

(2) I consider that in India the age of 16 is the minimum age proper for consummation of marriage. In rare cases 15 may be the proper age. Consummation of marriage *before* 16 is injurious to the health of the girl and her children. But this question is more or less academic, until there is a provision of law *restricting marriage before a certain age*. Whatever limit the law prescribes for marriage, that will be the age of consummation of marriage in most cases.

10. In extra-marital cases I believe, the age of 18 years would be proper.

11. I have come across cases in which cohabitation soon after puberty has had injurious effect on the young mother and her child.

I cannot give details of injury or of age.

12. Yes. Early consummation of marriage is responsible for infantile mortality and shattering of the health of the mother.

If early consummation be stopped by law it will put a stop to early marriages to a great extent. It will, then, promote female education also. Girls are now taken away from the school at the age of about 12 or 13, as they are expected to be married soon. They leave the school just at the time they can derive the best advantages of attending it. At the age of 13, 14 and 15 they have more mental capacity to understand the full meaning of what they learn.

13. I believe there is some development of public opinion since the introduction of law of 1925. It is among the educated class only.

14. I believe they do. They are anxious to see grand-children in their family. That is, I believe, the main cause of this evil.

15. On this question I can speak with more confidence.

The cases of rape that come to Court are from the poor classes and mostly from the villages. These classes are illiterate and have no horoscope of their children. Most of them do not know the year of the birth of a girl in the family. In very rare cases, the birth register (which is kept in every village by the Police Patel or Mukhi) is produced to prove the birth of the girl. In all cases the Medical Officer is called upon to give his opinion about the age of the girl. This Officer is generally a gentleman of the status of Sub-Assistant Surgeon. He gives his opinion that the girl in question is of *about* a certain age, that is, for instance, from 12 to 14, or some such period. It is not possible for him to give the exact age. So his evidence is not conclusive as far as the accused is concerned. Then the Court forms its own opinion from the appearance of the girl, which is sometimes misleading. But in cases where the girl is of 12 years or less, the Court is in a better position to form a correct opinion. But where the girl is above 12 and near 14, it finds great difficulty in arriving at a conclusion about the age.

The measure I would suggest under the circumstances is that the registration of birth should be enforced more strictly. I have found that in some cases births are *not* registered; in some, the fact of the birth of a *girl* is recorded but *not* her name. The recording officer (the Police Patel of village) thinks that he has fully performed his duty if he has registered that

a girl was born on such and such date. He does not take care to record her name which may have been given to her *some days after* her birth. The Officer whose duty it is to inspect the birth register does not pay much attention to it. If the importance of the point be clearly brought to the notice of the executive authority of the place, I believe the character of evidence about the age of the girl would be more satisfactory. There is no other way to securing satisfactory evidence about the age for girls of the lower classes born in small towns or villages. I am not in a position to say how far the registration of birth is satisfactory regarding the age and name of the child in big cities like Bombay, Surat or Ahmedabad.

16. The age of consent is 14 at present. If it be raised to 15, it would certainly reduce the margin of error in more cases than it does at present, which is self-evident.

17. To my mind it is desirable that there should be two separate sections for the extra-marital and marital offences. The question of punishment for the extra-marital offence does not arise as the punishment provided for it by section 376 is quite sufficient.

As regards marital offences the age of consent ought to be 15. The punishment provided for the husband is quite sufficient.

18. The procedure laid down for extra-marital cases of rape is not objectionable to my mind.

As regards marital offences, I have read the section 376-1, given at the end of page 3 of the questionnaire, in italics. My submission is that ago should be "not under 14 and under 15 years" and that it *should be made compoundable with the permission of the Court*. It is in the interest of the peace of the family and future happiness of the wife that the offence should be compoundable. If it is made not-compoundable, it will create everlasting breach between the two families, and the husband and the wife. In cases where the wife cannot get divorce from her husband, her life after the charge would be most miserable, while in cases where she may be able to get a divorce, the stigma against her of being a witness in a case of rape against her husband would make her unacceptable to any man as a wife. If the general object of the law be to secure peace and harmony in the society, to make the offence "not-compoundable" would be to defeat its own object.

19. This is a very wide question. As regards the offence of marital rape, the offence is already a non-cognizable one. Then the question is on whose complaint should the Court take cognizance of the offence. No member of the family of the husband is likely to complain against him. This offence is created, partly in the interest of the wife and partly in the interest of the Society. The only person who can launch a prosecution with an apparent guarantee that the complainant has good grounds to complain, is the wife or her relatives. So my suggestion is that the Court should take cognizance of the offence *only* on the complaint of the wife or her relatives. It is possible that in some rare case they may take an unfair advantage of this privilege, but that cannot be helped. There are provisions of law which may be misused by some unscrupulous persons but that should not prevent the legislative from providing a safeguard such as stated above. I must add that the wife would in very rare cases complain of rape against her husband. But provision must be made to permit her to do so, if she desires.

20. In my opinion fixing of the minimum age of marriage will be more effective than fixing a higher age of consent, for in the latter case there is no guarantee that any breach of the law would be brought to the notice of the Court. In fact fixing of any age for the consent of a wife, does not give any guarantee that its breach would be brought to the notice of the Court. It would be more honoured in its breach than in its compliance. It is practically useless. But it is necessary in absence of any better provision of law tending to restrict the chances of a man having sexual intercourse with a woman under the protection of law that is, the sanction of marriage.

Written Statement, dated the 14th August 1928, of Mr. CHHAGAN-LAL PRANLAL JETLI, B.A., Assistant Commissioner, N. D., Ahmedabad, Shahibagh.

1. No. Not so far as I am aware.

2. In my opinion the age of consent may be raised to 16. Girls of 14 are in my opinion incapable of forming a correct judgment. The raising of the age seems desirable in the interests of the girl as well as of the society.

3. Such cases, if any, are not taken to court except among lower classes and it is therefore difficult to say what has been the effect of the amendment of the law made in 1925. In higher classes even if such cases occur they are never taken to court, because such action would ruin the reputation of the girl and of her parents. The social disgrace involved in such proceedings is very great.

4. Marriage is now consummated at a later age than before. But this, I believe, is confined to higher classes and is due more to the spread of education and change in ideas than to any amendment of law.

5. Girls generally attain puberty in this part of the country at the age of 13 or 14.

6. Among higher and advanced classes girls are ordinarily married after puberty and the question of cohabitation before or soon after puberty does not therefore arise. Such cases do not go to court so far as I am aware.

7. Early marriage and early consummation of marriage were due to orthodox ideas. These views have lately considerably changed and even orthodox people are yielding in such matters to change of time and circumstances.

8. No Garbhadan ceremony is performed by people belonging to this part of the country.

9. No.

I consider that consummation of marriage should not be allowed before the girl reaches the age of 16 or 2 or 3 years have elapsed after the girl has attained puberty.

In the case of girls with a weak constitution 18 would be a more suitable age.

10. Sixteen years.

11. No.

12. Yes, to a great extent. Poverty and want of education are also partly responsible for high mortality.

13. Yes. But it is confined mainly to the educated classes.

14. Yes. Women of the old school who are not sufficiently educated and advanced and those of the backward classes favour early consummation of marriage.

15. I am not aware of any such difficulty. Compulsory registration of birth would minimise the difficulties, if any.

16. No, I do not think so.

17. The distinction now observed between extra-marital and marital offences may be continued. The punishment provided for each class seems adequate.

18. No. No such difference in the proceduro of trials is I think necessary.

19. I have no suggestions to make.

20. In my opinion legislation fixing the minimum age of marriage would be more effective than penal legislation fixing a higher age of consent for marital cases.

The offence is a non-cognizable one and no wife would go to prosecute her husband.

21. The alternative of fixing the minimum age of marriage would in my opinion be in consonance with the public opinion. Education and social propaganda should in my opinion be preferred to the strengthening of the penal law for securing the object in view.

Written Statement, dated the 14th August 1928, of Smtl. PRASAN-BAI, wife of Mr. Mulchand Asharam Shah, B.A., LL.B., Advocate, Ahmedabad.

1. There is no marked dissatisfaction with the present provisions of the Penal Code.

But a sensible and intelligent portion of the public desires that the Age of Consent should be raised.

2. Considerations of proper growth of manhood and womanhood require the raising of the Age of Consent.

Early marriages should be discouraged and are a great means of undermining the health.

3. My knowledge on this point is limited; but such offences do occur.

4. The amendment of 1925 has certainly been a means of discouraging early marriages, and has stimulated public opinion as regards the raising of age. But it has not afforded necessary protection. The law should be so amended as to render marriage impossible before the completion of 15 years of a girl.

5. The usual age at which girls attain puberty in and near the city is about 14.

But in remote villages the age is a little higher.

With the richer and well-to-do classes the age of puberty is generally 13, and in village communities the age is higher.

6. In our part of the country cohabitation before 13 is not common. The chances of such cases coming to Court are very rare.

7. There is no religious mandate known to me which directs cohabitation before puberty.

On the contrary the religious rites performed at the time of marriage clearly contemplate that both the bride and bride-groom should have attained such an age at the time of marriage as to imply that they understand the full responsibilities and obligations of the new life which they are entering.

8. Ceremony contemplated in this question is not common in our part of the country.

9. Attainment of puberty is not a sufficient indication of physical maturity to justify consummation.

We should consider 16 as the reasonable age when consummation should be allowed.

10. The age of 18 is the period when a girl would be in a position to give an intelligent consent to cohabitation.

11. We have come across many cases in the circle of friends and relations where cohabitation at an early age even soon after puberty has resulted in the destruction of health of females.

The general diseases which result from this are consumption, debility and weakness of constitution. Females look old at a very early age; and lose all their youthfulness and vitality. Their progeny is also weak. It is difficult to narrate instances; but they are very common.

12. We do consider early consummation and early maternity responsible for the diseases mentioned in this question.

13. The amendment of 1925 has developed public opinion amongst the intelligent and educated classes for extension of Age of Consent to the completion of 15.

It is such classes who guide others and their opinion should count a great deal. Ignorant classes scarcely devote any thought to this question.

14. No.

15. I have no experience of actual working of these sections. But ordinarily there would be great difficulty in determining the age of a girl.

Compulsory registration of births would be a good means of removing this difficulty.

16. The difficulty of determining the age would be reduced to a certain extent by raising the Age of Consent to 15 (complete).

17. We would desire separation of extra-marital, and marital offences into different classes.

The nature of punishment in each class had better be determined by those in authority.

18. As regards the procedure of trials for offences within the marital state, the offence should be bailable, and accused should not be arrested without a warrant, and be triable exclusively by a Court of Sessions.

19. I cannot suggest any. However I may say that education and development of public opinion would do a great good.

20. The raising of marriageable age would be more effective for remedying the present existing evils.

The raising of age for marriage is favoured by public opinion at least amongst the educated classes. The age should be 15 (complete).

21. We would prefer strengthening of the penal law for attaining the object in view.

Progress of social reform by means of education is extremely slow in remedying the evils. We must act up to the well-known Sanskrit proverb **राजाकासञ्च कारणं** (i.e., the king should be the cause of bringing about a certain opinion amongst the people).

Written Statement, dated the 15th August 1928, of Mr. B. T. PATEL, LL.B., Joint Secretary, Bar Association, Broach.

Before the series of specific questions be answered, it may be stated at the outset that in the interests of girls of tender ages, it is desirable to bring a little greater number of cases within the scope of our Penal Law. It is necessary to raise the present age of 13 and 14 years to 14 and 16 years for marital and extra-marital cases, respectively. It must be admitted, however, that in the case of married parties this step will hardly be an adequate safeguard as the girl offended against will be most reluctant to bring the offence to light. The legislation will no doubt work as a fair preventive.

The Bill penalising child marriages below the age of 14 years for girls and 18 years for boys is of supreme importance and is a most effective measure. Before it is passed, violations of married girls who are between 13 and 14 years of age go unpunished under the present law. Even when it is passed, it will check marital cases only. Outside the marital state, the present law does not protect girls over 14 years of age and so in such cases the age must be raised to 16 years.

The number of the questions set for the opinion is exhaustive, and the reasons of the opinion will be found in the several answers given below in the order of the question.

The law is not found to be satisfactory, as it falls short of securing safety to girls who are below the age of 13 years. Girls between 13 and 16 years of age require the same protection as those below this age.

2. The present law must be further amended. The object of the law must be fully carried out by extending the age.

3. Even before the amendment of 1925, cases of this type were not frequent on this side of the country. The only way to make the law effective is to raise the Age of Consent to 16, when alone the girl is in a position to make an intelligent decision for herself.

4. No such cases are known to have come to Courts but the public opinion is strengthening in favour of postponing marriage and its consummation beyond the girl's age of 18 years. The best course is to penalise child marriages, as sought to be done by Mr. Sarda's Bill.

5. Here the usual age of puberty is 14 years in almost all classes of society.

6. Generally cohabitation takes place soon after the girl completes 13 years. But no complaint comes to a Court for an offence against the girl-wife.

7. Early consummation is not enjoined by religion. In the case of a boy-husband it is due to custom. If the husband is a youth or a man of advanced age, it is due to the animal instinct.

8. No such ceremony is performed here. Soon after puberty is attained, the girl is sent to the husband's place in expectation of consummation.

9. Puberty is no indication of physical maturity, even though it is attained at the early age of 14 years. The proper age of attaining it is 16 years, when there will be sound development.

10. A girl in India can never give her intelligent consent under the age of 14 years. The more proper age for the purpose is 16 years, though it is revolting to the custom.

11. It is a matter of every day experience to find the evil consequences of early cohabitation. Weakness of constitution, shortness of life and appalling infant mortality are more than apparent results.

12. Both in theory and in experience these results are due to the evil practice of early cohabitation.

13. Nothing is felt more shocking than widowhood of girls before or soon after consummation in several cases. Any legislation extending the age is earnestly to be welcomed, whether it be for penal or for civil purposes.

14. Women are prone to have children, to consummate the marriage at an improper age; but the bitter experiences are bettering their susceptibilities.

15. The task becomes harder even for the medical profession on account of complications made by early cohabitation. The root cause must go.

16. If the Age of Consent is raised to 14 years or above, the undeveloped condition can help the determining of age.

17. A stranger is to be more severely dealt with than the husband. The husband has to be re-united with the wife and he deserves some leniency for the sake of future peace: as the marriage is not to be dissolved merely on this account. He must get only one-fifth of the term to be awarded to a stranger.

18. In marital cases the trial must be in camera.

19. If the offender be the husband, he may be detected by the Medical adviser who happens to treat the patient and the duty may be cast on him to inform the authorities. In cases of improper prosecution the existing safeguards are ample enough.

20. With regard to marital cases, the direct method is to fix the minimum age of marriage and to penalise marriage within the proscribed age. Until this is done, the penal law may be amended in order to awaken the consciousness of responsibility of outraging a child-wife.

21. In a conservative country social reform will be too slow to meet the urgency of such cases, and consequently penal legislation will be speedier and more impressive.

**Written Statement, dated the 18th August 1928, of Mr. SAKARLAL
BALABHAI, M.L.C., Ahmedabad.**

1. Yes.

2. An advance on the present law is desirable in view of the ever growing infantile and maternal mortality and the degenerated progeny which is the outcome of the early consummation of marriage.

3. Crimes of seduction or rape if at all are generally in depressed and backward classes. The amendment of law in 1925 has not succeeded in preventing cases of rape though it may be responsible for preventing improper seduction of girl for immoral purposes to a very small extent. Compulsory primary education and social propaganda would do well to improve the existing state of things.

4. (1) No.

(2) Yes.

(3) Yes, to a small extent.

Same answer as to question 3.

5. About 14 to 15. Yes, puberty is attained earlier in lower and working classes than in cultured and educated classes.

6. (1) Rare.

(2—3) Yes.

No.

7. The practice of the early consummation of marriage can be attributed more to social as well as religious injunctions. In some castes, like patel or kunbies marriages take place at an interval of some years and each and every maiden is married in that year whatever may be the age. Some sections provide that a girl must marry at 13 or before attainment of puberty. These injunctions are generally enforced on the authority of Ancient Hindu Scriptures and some penalty by way of some religious ceremonies and sacrifices are reported to have been prescribed in some low castes for breach of these rules.

8. This ceremony is not common in our part and no such ceremony is celebrated with anterior to the marriage.

9. I do not consider the attainment of puberty in these days as a sufficient indication of physical maturity to justify consummation of marriage. I think that the age of 16 can be considered enough to justify such consummation without injury to her own health or that of her progeny, in this part of the country.

10. It depends on the education that is attained by the girl. An educated girl would not prefer before the age of 18 otherwise it is generally controlled by the society.

11. I have come across cases in which cohabitation before puberty or before full physical development resulted in an injury to her own health and to her progeny. I have not maintained any records of such cases but I believe such cases are many in number and occur in cases of cohabitation before the age of 14 leading to degenerated progeny with grave possibilities of tuberculosis and ricket diseases to the mothers and the children.

12. Yes. Early consummation and early maternity are responsible for high maternal and infantile mortality besides low vitality and want of spirit and energy very adversely affecting the progress of the people.

13. Yes, but that development of opinion is confirmed to a small section of educated and cultured classes.

14. The society that is not properly educated and has not realised the full consequences of early consummation of marriage are in favour of it.

15. I have no experience of this nature and I cannot suggest anything in this direction.

16. Yes.

17. Yes, for offences in marital and extra-marital cases different punishments ought to be provided. For marital offences I think light punishment and preferably that of fine will suffice, and that for extra-marital cases imprisonment of two years should be inflicted.

18. Yes, special courts be provided for trial of offences within the marital state as apart from the usual law courts for trial of offences without the marital state.

19. No.

20. I think that the legislation fixing a higher Age of Consent for marital cases is likely to be more effective than the legislation fixing the minimum age of marriage. The first alternative would be in accordance with the public opinion but in my opinion it is desirable that the minimum age of marriage if any fixed will have a good consequential effect.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda to secure the object in view instead of on the strengthening of penal law.

Written Statement, dated the 15th August 1928, of Mr. GORDHANDAS I. PATEL, B.A., M.L.C., Member, Ahmedabad Municipality, Ahmedabad.

1. State of law as to the Age of Consent as embodied in Sections 375 and 376 of the Indian Penal Code, which was considered suitable to the society prior to 1915, stands in need of increase in age at present. Social customs, traditions and superstitions have within the last decade undergone considerable change for betterment and the spread of education with the growth of views adaptable to moral civilisation have changed the level of society in a marked degree. However, legislation on the question should be so made as would take into consideration the status and beliefs of the poorer classes and masses of the whole country. This requires cautious and progressive legislation backed by the education of the masses—to the realities of life and blunders committed through ignorance. In order to proceed cautiously I would suggest that the Sections be amended by raising the age mentioned therein by one additional year. Thus the words "If the sexual intercourse was by a man with his own wife being under 13 years of age (as per Sir Harisingh Gaur's Bill)" should be modified by altering 13 years to 14 years. Similarly the altered Section 376 'A' should run "Illicit marriage intercourse by husband with his wife not under 14 and under 15 years of age".

Among the educated classes and enlightened portion of the masses dissatisfaction prevails with the existing state of law.

2. The circumstances which, in my opinion, justify the making of this advance on the present law are manifold. The spread of education, the growth of higher instinct in the masses and the classes, the effects of international relations between India and Western countries, change of habits of life and mode of thinking as affected by a little alteration in the angle of vision, enlightenment of parents and guardians towards Eugenic development of their progeny and the losing force of superstition in the lower strata of the masses and such other causes and environments stand in justification of my views.

The spread of special literature on the science of Eugenics like the series of Psychology of Sex by Dr. Havelock Ellis, Happiness of marriage by the German Dr. Carl Butten Stedt, the literature published by Marie Stopes and books like what a Young Husband and Young Wife ought to know along with some recent publications in India have materially influenced the views of the growing educated youths in India and spread among them a keen desire to see the future generation protected from the evils of early marriages and reckless habits of life. I have tried to collect literature on the subject from

different countries of the world during the last 25 years and from this also I can justify the opinion which I have formed on this question.

3. The crimes of seduction or rape are not so frequent in Gujarat though they are reported to be very frequent in Sind. The amendment of law made in 1925, raising the Age of Consent to 14 years has succeeded to a certain extent in reducing cases of rape; however, in the lower strata of society the cases are found to be so frequent as would remain beyond the clutches of the law. Cases of improper seduction of girls for immoral purposes are more numerous in large cities than in the district particularly on account of the facility of brothels and such other conveniences of illicit, immoral and illegal purposes in such cities. To make the law more effective the first step in the right direction is the wholesale abolition of brothels from the cities or the reservation of a special secluded area to the extreme minimum in case it is not immediately possible to effectively abolish in a wholesale manner the system of brothels.

Compulsory primary education is an immediate initiative in securing the desired ideal coupled with moral propaganda among the masses through public bodies and Government persuasion. The average longevity of life in India would be decidedly increased with the advance of education resulting into the Eugenic conscience enlightening the minds of society.

4. It is rather premature to give definite opinion as to the protection afforded to married girls against cohabitation with their husbands within the prescribed limit of the amendment of 1925. However, one can state with emphasis that with the advance of time the postponing of the consummation of marriage, stimulating of public opinion in that direction, and the raising of the marriage age beyond 14 would be an accomplished fact.

5. In Gujarat and the Districts the usual age at which girls attain puberty is considered to be 14 though this differs in different castes and communities or classes of society to a small extent.

6. Cohabitation before puberty could not be said to be common in this part of the country among the educated poorer classes or the masses as during recent years marked change has been observed in regard to the customs and manner which they used to follow previously. Cases of this nature have not been heard of having been discussed in a court of law usually and it is not likely that such cases would come to the Court unless sufficient publicity is given to such cases whenever they come to the Court.

7. Religious prejudices and superstition are instrumental in several cases of the early consummation of marriage before puberty; however, the dearth of family education is the main cause to which this practice could be mainly attributed. The nature of the religious injunctions is such that the attaining of puberty by a girl who has not been given in marriage is a kind of sin. It is with this view that some staunch religionists give over their girls in marriage but at the same time they are careful in preventing them from going to their husbands till the attaining of certain age. This is the case in most of the orthodox Hindu families. There are certain penances and sermons laid down to obviate the effects of such a sin in case the girl is not given over in marriage before puberty. However the injunctions, namely—

प्राप्ते तु द्वादशे वर्षे यः कन्यां न प्रयच्छति ।

(The man who does not give in marriage his daughter before 12 is a sinner.)

ऋतुस्नातां तु यो भार्यां सन्निधौ नोद्यगच्छति ॥

(One who does not approve the wife after menses is a sinner.) are sufficient to protect the girl from early intercourse.

8. "Garbhadan" sermon is not usually performed in "Gujarat" though in some selected classes such practice in the family is in force. In some cases follows after a few months after the consummation of marriage.

Registration of Births and Deaths in villages on the line on which it has been established in big cities seems to be the only remedy at present with a view to introduce a system of registration of the age of girls in all families.

16. The difficulty or margin of error in determining the age should be materially reduced by raising the Age of Consent to 14 years or above.

17—19. It is necessary to separate extra-marital or marital offences into different offences. The punishment for the former should be stricter or perhaps double than that of the latter.

In regard to marital crimes it would be safe to inflict punishment in proportion to the gravity of injury inflicted. In cases of the innocence of the females the males only should be punished without bothering much with the social or religious matters.

20. Penal legislation to fix a higher Age of Consent for marital cases is not very likely to be more effective than legislation fixing the minimum age of marriage. I would prefer the latter to the former as public opinion is to be considered in all its bearings including the classes, masses and the poorer degenerating elements of the society of such a vast population.

21. Progress of social reform by means of compulsory primary education for masses and classes in the whole country and by means of social and other

propaganda is the pioneer means of securing the object in view and when a certain level and uplift in the status of society has been attained reliance on the strengthening of the penal law would prove advisable and effective.

Written Statement, dated the 19th August 1928, of Khan Bahadur H. P. CHAHEWALA, B.A., LL.B., Assistant Government Pleader and Public Prosecutor, Ahmedabad.

1. Yes, because under the present law the ages are too low.

2. I am in favour of making an advance in the present law. In extra-marital cases the Age of Consent should be raised to 18 years.

Though, it is very desirable to increase the Age of Consent in marital cases also—the law in effect is merely a dead letter. Therefore, because of its impracticability—I am not in favour of Section 376-A., as outlined in Dr. Gour's Bill. The breach of the law in such cases is very difficult to detect and to penalize. In this District, I have not yet heard of a case in which a husband has been prosecuted for raping his wife who was under 13—although such rape must be and is fairly frequent.

As, in my opinion, raising the Age of Consent in marital cases is almost wholly ineffectual, the best remedy is to adopt Mr. Sarda's Bill which is to the effect that marriages below 14 and 18 for girls and boys respectively should be penalised. To allow child marriages to take place and then try to restrict consummation of marriage to a particular age—is anomalous and is almost an impossible task.

3. Yes, but very few cases come to light. The amendment of the law made in 1925, raising the Age of Consent to 14 years outside the marital state has been almost entirely ineffective.

4. (1) No.

(2) To a very small extent.

(3) No.

The only remedy is to penalize early marriages. I am strongly in support of Mr. Sarda's Bill though I think that this Bill also does not go far enough.

6. (1) Not very common.

(2) Yes, in most cases.

(3) Yes, in some cases.

Such cases do not come to Court.

9. No. Speaking generally and in view of the fact that in India puberty and physical development are reached early—16 is the proper age at which consummation may not be harmful to the health of the girl and her progeny.

10. Sixteen.

11. Yes, high infantile and female mortality are the direct results.

12. Yes, to a very great extent.

13. There has been some development of public opinion in Ahmedabad in favour of an extension of the Age of Consent in marital and extra-marital cases since 1925, but it is confined only to the highly educated classes who form a very small percentage of the general public.

15. Yes. Registration of marriages must be made compulsory. Birth registers should also state if the parents of the baby whose birth is registered have other children and how many. The register should further state the year of marriage of the parents. The vaccination registers should also give these details.

16. No.

17. Yes, the present punishment in extra-marital cases is adequate. In marital cases where the wife is under thirteen it should be imprisonment of

either description for a term which may extend to 7 years and a fine. When the wife is over 18 but under 14 imprisonment of either description for a term which may extend to 2 years, or with fine or with both.

18. The procedure should be the same, but all cases within the marital state should be heard in Camera.

19. No. It is therefore that the law is bound to be ineffective to a great measure. The only remedy is to raise the age of marriage.

20. No. Fixing the minimum age for marriage and penalising the breaches thereof will go a long way to solve the problem. This would be more in consonance with public opinion.

21. Both.

Written Statement, dated the 21st August 1928, of Mr. M. M. MEHTA, L.M. & S., Ambaji Road, Surat.

1. It is difficult to say whether Indian mass people ever can be satisfied or dissatisfied on such a question. My personal impression is that there is no dissatisfaction.

2. I think advance should be made if physical deterioration of the Nation is to be the first consideration of the State when advance is fully justified.

3. I have no statistics to guide me in answering this question.

4. My general impression is in the affirmative.

5. Generally after 12.

(b) Differs to some extent according to mode of life.

6. No.

(1-3) & (b) Rarely.

7. Not to my knowledge. Though a few Mullas and Brahmins say so, a good many with whom I have come in contact, deny any religious injunction for such a practice.

8. Garbhadhan as it is usually understood on this side is a ceremony which is performed at the first pregnancy of a woman (after a woman becomes pregnant for the first time).

9. No. A girl's whole bony system does not get ossified before 20. But I think 18 may be considered a proper age for justification for consummation of marriage—the earliest age when consummation of marriage may not injure the girls' constitution.

10. Between 20 and 25.

11. I see daily cases of physical wreck on account of early pregnancy, i.e., before maturity. I have not come across with any case of injury.

12. Yes. An immature constitution is incapable of nourishing her offspring well; hence immature children who cannot withstand the least rough weather of life and climate most of whom die within the first month of their existence. This is a national loss and the State must check it, if it is to prosper.

13. Yes. The law compels the people to think most of whom are physically and mentally incapable of thinking for themselves what is good for one's country. High infant mortality is a loss—a huge loss of rupees, annas and pios by scores to the country. Educated public opinion certainly favours extension of Age of Consent; but some are timid to raise it even to 18 in case of girls. It is not confined to any particular class.

14. The so-called depressed and backward communities still favour it—more their women than men.

15. Complete ossification of bones could be detected by an X-Ray apparatus and there should be no difficulty in places like Bombay, Poona in determin-

ing a girl's age at 20. In absence of such an apparatus, after 12, it would be difficult to say exactly the age of a girl. But such cases only come up for Medico-Legal work and are rare comparatively in ordinary walk of life.

16. Please refer to paragraph 15.

17. Cannot answer this as it is beyond my profession.

18—19. Same as per 17.

20. Both are necessary.

21. I would prefer legislation. Social and educational propaganda by themselves cannot do much.

Written Statement, dated the 27th August 1928, of Sardar ISHWAR-DAS JAGJIWANDAS STORE, Surat.

1. It is not publicly known whether there is any dissatisfaction with the State of Law as to the Age of Consent as at present laid down in Sections 375 and 376 of the Indian Penal Code. But people do murmur as to the interference by Legislation in such social matters and custom in vogue since times immemorial and since the promulgation of the intended increase of Age of Consent to be introduced in Law.

2. As for my personal opinion I consider even the present Age of Consent (14) as laid down in the Law for marital purposes is too high. Nature must take its course, and if married grown up girls are prevented from cohabitation with their husbands there is every danger of the girls going astray. In my opinion therefore the age of 13 is quite sufficient as that of consent for marital purposes. For other purposes it may be raised to any advance provided there are adequate and cautious provisions in Law for seizure of offences so as not to have that power in the hands of low-paid officers of Police who will not fail to harass people on the slightest chance.

3. To my knowledge crimes of seduction and rape are not so frequent in this part of the country.

4. Marriage of girls generally does not take place before they are 13 years of age. But it is not attributable to the amendment of 1925, raising the Age of Consent to 13 years. It is the enlightenment of the present state of things that puts off marriages to a very higher age than 13. This is done with a view to avoid fear of girls suffering early widowhood. But I have seen more than half a dozen of cases where though girls married at an advanced age with persons of adequate age and health soon becoming widows even within a fortnight or a week after marriage. Thus nature is invincible.

Consummation usually takes place soon after marriage but not under 12.

5. Usual age of attainment of puberty is 11 to 13 or seldom 14. It might vary in different caste or community, higher classes getting earlier and lower ones later. Yet much depends on the health and constitution of the girl.

6. Among some communities there exists a belief that it is sinful if cohabitation does not take place before puberty and it brings calamity on family or the pair. Among such people cohabitation takes place before puberty. It is generally common soon after puberty and hence before 13. No case has been known to have gone to Court.

7. The practice of early consummation of marriage at puberty is attributable to religious injunction such as Manu and Parasar Smritis.

(1) शोणितदर्शनोपलक्षितो गर्भधारणयोग्यः स्त्रीणाम् अवस्था-
विशेषः

(2) ऋतुस्नातां तु यो भार्या मन्निधौ नोपगच्छति घोरायां भ्रम
हत्यायां पतते नात्र संशयः

पराशर स्मृतिः ।

(3) ऋतुस्नाता तु या नारी भर्तारं नोपमर्षति ।

मनुः ।

Injunction by religion—

ऋतु कालाभिगमोऽस्यात्सुदारनिरतः सदा

मनुः ।

प्राप्ते तु द्वादशे वर्षे यः कन्यां न प्रयच्छति

मामि मामि रजस्तस्याः पिबन्ति पितरः स्वयम्

पराशर अ ७ श्लोक ५ ।

तस्मात् उद्वाहयेत् कन्यां यावन्नर्तुमती भवेत्

य-स्मृ ३ २३ ।

Penalty prescribed is performance of penance that rises in degree (double, triple, quadruple and so on) the farther it is put off from puberty.

8. Gaona ceremony is not usually performed in this part of the country. But whoever or wherever it is usual to perform, it is performed soon after attainment of puberty. If not convenient it may be prolonged even up to six months. It coincides with the consummation of marriage.

9. *Vide* answer to question No. 7 above.

10. I am unable to answer this question.

11. I have not come across any such case.

12. Early consummation and early maternity are not responsible for high maternal and infantile mortality if the girl is healthy and not suffering from any disease.

13. There has been no real development of public opinion in this part of the country in favour of extension of the Age of Consent since the amendment of Law in 1925. But here and there people now-a-days carry on propaganda simply as an agitation and emulation of what happens in other places.

14. Majority of women do desire early consummation of marriage for their children.

15. No case of any difficulty has come to light for ascertaining the age of girls. I cannot suggest any measure to minimise it, except horoscopes. Examination by Surgeons is a mere guess work.

16. I can not understand how the difficulty of determining age be reduced or minimised if the Age of Consent is raised to 14 years.

17. Of course extra-marital and marital offences should be considered separate offences and punishment of each in the present Law is sufficient.

18. Trials of marital cases should be conducted before First Class Magistrates only. Others may be tried by any Magistrate but not lower than 2nd Class.

19. *Vide* answer to question No. 2.
 20. I do not consider penal legislation fixing higher Age of Consent for marital cases would be more effective than that fixing the minimum one.
 21. Both methods are equally good.

Written Statement, dated the 27th August 1928, of Mr. CHIMANLAL N. MEHTA, President, Borough Municipality, Nadiad.

1. Yes.
2. (2) An advance on the present law must be made. In the case of sexual intercourse with a man other than the husband of the woman, the Age of Consent for the woman must be raised from 14 to 16 years. as the age of 14 is too small for her to give an intelligent consent and know the after effects of such intercourse, both on her physical constitution and mental temperament. Personally, I would like to raise the Age of Consent to 16 years even in the case of sexual intercourse by a married woman with her own husband. But the present society does not appear to me sufficiently well developed and educated to agree. Hence as a *via media* the age of 14 years appears to me wise. Intercourse, before that age, is sure to shatter her physical constitution.
3. Yes.
- (2) Penal legislation and keen police watch appear to me to be the only measures to stop these crimes.
4. (1—2) No, not to any material extent.
- (3) It is true the society is gradually advancing by putting off marriages to a higher age, but that is not due to the amendment of 1925.
5. 12 to 14. No; but where the society is quite low and degraded and morality is not strictly observed, the girl might attain puberty a little earlier. It is more the climate that is responsible for this than the surroundings.
6. (1) No.
- (2) Women belonging to the old school and who are illiterate very often desire this and manage to put their girls to this difficulty.
- (3) No.
- No.
7. Among Hindus certain Smritis known to have enacted that the parents who see the face of their daughter unmarried on attainment of puberty will fall into indelible hell. People must be trained to overlook this rigour as out of date.
8. This is not very strictly observed in Gujarat. In the Dekkan it is generally observed. It takes place soon after puberty.
9. No.
- (2) Not before 18 years of age.
10. This would depend upon her surroundings and Education. In any case, not before 18 years of age.
11. The cases are of every day occurrence, almost in every Hindu family. The race is simply deteriorating.
12. Yes.
13. Yes, but it is confined to certain Educated classes only.
14. Yes, old and illiterate woman do so.
15. Yes. Difficult to suggest any more measures than those already existing.
16. Yes: if raised to 16 years it will be still better.

17. I would penalise child marriages somewhat on the lines of Mr. Sarda's Bill; though I would reduce the age of the girl to 12 years. After that is done, I would separate the two offences. In marital offences I would reduce the maximum punishment to imprisonment for 2 years or fine or both.

18. I would make marital offences triable by a First Class Magistrate specially authorised on the ground of his experience and I would also make such offences non-cognizable and not triable except on the complaint of the girl affected or her parents or brothers.

19. Yes: somewhat on the lines of clause 11 of Mr. Sarda's Bill.

20. Penal Legislation fixing a higher age of consent will be more liked by the people than Legislation fixing the minimum age of marriage.

21. On both.

Written Statement, dated the 14th August 1928, of Mr. D. D. COOPER, B.A., LL.B., District and Sessions Judge, Surat.

1. There is great dissatisfaction with the state of the Law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. The dissatisfaction is all the more marked in advanced communities.

2. The circumstances which justify making an advance on the present law are:—

(1) Physical deterioration of the Indian communities each generation being weaker than the one preceding it.

(2) The appallingly high rate of infant mortality.

(3) Such offsprings as survive are physically weak and in extreme cases are a burden on their relatives.

(4) Lowering of the physical vitality so much so that several classes conscious of their inability to stand the strain of other vocations have recourse to only the learned professions or to clerical line.

(5) The appallingly high rate of mortality of mothers unable to endure the travails of maternity.

(6) The young couple especially the husband start in the race of life with a heavy handicap. He has to give up further studies so as to be able to earn the sources of livelihood of the family dependent on him. Frequent births, illness of the members of the family and family bereavements are a severe strain on his pecuniary resources. In short early parentage has a dwarfing influence on both the parties morally, intellectually, physically and pecuniarily, more especially on the husband who fails to rise to the full height of his manhood.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years has been partly but not wholly effective in protecting married girls against cohabitation with husbands within the prescribed age limit because of the combined effect of (1), (2) and (3) in query No. 4.

5. Twelve is the usual age at which girls attain puberty in this part of the country. In classes more virile and conforming to a higher standard of living the limit is slightly higher.

6. Cohabitation soon after puberty is common in this part of the country especially amongst backward classes.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. A period of 2 years must be allowed to elapse between the two events.

10. At the age of sixteen.

12. I consider early consummation and early maternity responsible for high maternal and infantile mortality and for other deleterious results vitally affecting both the intellectual and physical progress of the people.

13. Since the amendment of the law in 1925 there is further development of Public opinion in this part of the country in favour of an extension of the age of consent in marital and extra-marital cases. But this development is confined to the higher classes.

14. Women wedded to orthodox views favour early consummation of marriage but these laying claims to same views do not.

15. Difficulties are experienced in determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code. The measure that I would suggest to remove these difficulties is a more full and accurate system of birth registration. At present the name of the child is not generally stated in the register because the formality of naming the child is gone through several months after its birth. I suggest that a column be added in the birth register for stating the name; the column may be filled up several months later on when the child is given a name.

16. I do not think that by the mere raising of the age of consent to 14 years or above, the difficulty or margin of error in determining the age will be either materially reduced or minimised.

17. I would separate extra-marital and marital offences into different offences. Because of the unsavoury ideas associated with the word "Rape" it is desirable to put marital offences in a separate class designated "Illicit married intercourse". The punishment now prescribed for extra-marital offences meets the ends of justice. For marital offences maximum punishment for a term of 2 years' imprisonment or fine not exceeding Rs. 1,000 or both will be quite adequate. In view of the sentiments of backward communities and they in my opinion form the bulk of the population higher sentence than the above will be resented.

18. I am not in favour of introducing a difference in the procedure of trials for offences within and without the marital state.

19. No safeguards beyond those existing at present are needed against collusion to protect the offender or against improper prosecution or extortion.

20. Legislation fixing the minimum age of marriage is likely to be more effective than penal legislation fixing a higher age of consent but I am afraid that the latter alternative would be more in consonance with public opinion in this part of the country?

21. I prefer to rely on the strengthening of the penal laws to secure the object in view, because the progress of social reform by means of education and social propaganda is bound to be very slow, nay nearly imperceptible. In view of the ground already lost the measures must be both prompt and effective.

Written Statement, dated the 2nd September 1928, of Mr. M. K. DIXIT, L.M.S., M.L.C., Surat.

Note.

It is a misnomer to call the age of 13 or 14 as the age of consent. Because of the plain fact that if a girl aged one day less than 18 years gave consent to the disposal of her property, and if that consent was contested in a Court of law, it would be considered invalid. But if a girl aged 13, 14 or 15 years gave a consent to the disposal of her person, it would be considered valid. How ridiculous the whole thing looks. It is tantamount to saying that a girl's property is considered more sacred and therefore better protected, than her own person. I have had occasion

to talk this matter over with several ladies, who expressed the sentiments stated above. They further complained that in *men made* laws, greater protection will be afforded to the property of the girls than to their own persons.

Answers to questionnaire.

1. Yes.

2. An advance should be made on the present law; because the present law is inadequate.

3. I do not think crimes of seduction or rape, as far as the age of consent is concerned, are frequent in my part of the country. The other questions therefore do not rise.

4. The consummation of marriage in case of child marriages or marriage before or even at 13 are not affected in any way by the amendment of 1925. They are not frequent. They are exceptions rather than a rule. The postponement of consummation of marriages or late marriages are the result of education and public opinion.

5. It is not easy to accurately define puberty. But if by puberty in girls is only meant the beginning of menstrual flow it varies between 12 and 14 years. Among lower classes where sexual relations are indiscreetly indulged in for any reasons—like drunkenness of one or both parents or living in one room tenement where children and parents sleep together it is about 12 years or less. In higher classes, where the minds of the girls are engaged in studies at schools and do not breathe the sexual atmosphere it is 14 years.

6. (a) Before puberty—very rare.

(b) Soon after puberty—common.

(c) Before the girl completes 13—rare even if she has reached puberty.

7. I do not attribute the practice of early consummation of marriage to religious injunction nevertheless it exists, it is merely a custom.

9. I do not think that attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. This is just the beginning of her sexual life. It is beginning of the evolution process. Just as a child, who may begin to walk at the age of one year, cannot be allowed to walk about in the streets or sent on errands or entrusted with a responsible task to reach a particular place, so a girl who has just begun to menstruate, cannot be considered fit for becoming a mother as far as her body is concerned. She cannot be entrusted with the responsible task of gestation.

Physical development may be considered to be enough to justify consummation of marriage after 16 years, so that her first delivery may take place when she is about 18 years old. It is at the age of 18 years that the pelvic bones, which constitute an important case for grand uterus, develop properly and completely. The pelvic cavity which forms the passage for the foetus to appear in the world develops fully at that age.

10. The age when a girl in India may be considered competent to give an intelligent consent to cohabitation is eighteen.

11. I have come across several cases during my professional experience, when early cohabitation had led to early pregnancy leading to general weakness, premature delivery or severe labour with tearing of perineum and consequent sepsis. The general debility leads to sub-involution and other diseases of women. In some cases early pregnancy has led to tuberculosis, and has prejudicially affected the progeny. Details cannot be given in a questionnaire like this.

12. Early consummation and early maternity are responsible for high maternal and infantile mortality. First child survives less frequently than the subsequent progeny, and occasionally the first pregnancy proves fatal in young mothers.

13. Public opinion is gaining ground in favour of increasing the age of consent. It is so generally in all classes but particularly more so in upper classes.

14. Orthodox and ignorant mothers do not consider it safe to keep girls, after the establishment of menstrual flow, away from their husbands.

15. I have personally no knowledge of such difficulties.

16. Yes.

17. Offence is an offence whether marital or extra-marital. If anything extra-marital offence will not be repeated from day to day; but marital offences will be continued daily. I should prescribe R. I. upto five years according to the circumstances, age and development of the girl.

18. I would not make any difference in procedure of trials for offences within or without marital states. Because the object of such a legislation could only be physical well-being of girls and the progeny. The husband should be considered more responsible for the well-being of the person of his wife, than an extra-marital man who is out for a little pleasure.

20. I think the penal legislation fixing a higher age of consent for marital cases is likely to be more effective than a legislation fixing the minimum age of marriage. Because in certain large communities child marriage is very common. But it is only a ceremony. The consummation of marriage takes place after puberty usually.

21. For securing the end in view I should certainly rely more on social reforms by education and social propaganda than on penal law. But for certain class of miscreants and incorrigible and morally perverse section of society penal law is necessary.

Written Statement of Mr. A. O. KOREISHI, M.A., Collector, Broach.

1. The masses are too illiterate to appreciate the state of the law on the subject and so far as I am aware there is no express dissatisfaction except for cases outside the marital state.

2. Humanity requires that there should be an advance on the present law especially outside the marital state, though the social formation in Hindu Society especially is such that it calls for cautious action.

3. Cases of seduction, no doubt are frequent, but I do not think cases of rape are equally so. I do not think that the amendment of 1925 raising the age of consent to 14 has in any way appreciably diminished offences of this type. In a society that is split up into hundreds of castes, the question of obtaining a bride is naturally a difficult one and consequently low caste girls are often seduced and palmed off as suitable brides to high caste people. Educative propaganda and dissolution or at least considerable relaxation of the caste system would be the most suitable measures for making the law effective.

4. I can pretend to no personal knowledge on the subject.

5. Girls usually attain puberty between 12 and 14, the age different in the case of well-to-do and poor classes and again in the case of meat and vegetable diets.

6. Usually not before puberty though it is not uncommon soon after puberty.

7. I know of no religious injunction.

8. No such ceremony seems to exist in Gujarat.

9. I would answer "No" to the 1st sentence. Medical men may be in a position to give a proper and scientific answer to the second sentence. but, so far as a layman's view can have any weight I would put it down at least 5 years after puberty.

10. Eighteen years.

11. No such case has come to my notice. But I am strongly of opinion that the general break down in the health of girl-wives which we see in so many families is due to early—I mean long before the age given in question 10—consummation of marriages.

12. Yes.

13. I have already stated that the masses have hardly any knowledge of the state of the law and consequently there can be no development of public opinion amongst them. The educated classes may have an opinion in favour of an extension of the age of consent.

14. I do not think so, at least not the Muslim women.

15. Difficulties are felt as the village and town Birth and Death Registers are not very perfect and often times a decision on the point lies with the medical authority that is available. I should suggest the insistence on the better and more precise keeping of the Birth and Death Registers in towns and villages.

16. I cannot give an opinion on this matter.

17. I would like to separate the extra-marital and marital offences into different offences. The marital offence may carry 2 years' imprisonment which should be enough and the present punishment should be retained for extra-marital cases.

18. Offences within the marital state may be made triable by a 1st class Magistrate (if possible, with the assistance of jurors). Offences without the marital state should, as at present, go to the Sessions.

19. I have no special safeguards to suggest.

20. I consider that penal legislation fixing a higher age of consent for marital cases is likely to be more effective and more expedient than fixing the minimum age of marriage. In the latter case, many a parent may be prevented from performing the marriages of their daughters which they may owing to considerations of Society, policy or family relations and circumstances be contemplating within their lifetime.

21. The strengthening of the penal law is desirable, but at the same time social reform should be pushed on with vigour by educative and social propaganda.

Written Statement, dated the 11th August 1928, of Mr. MANILAL K. DESAI, Broach.

1. The masses have no opinion in the matter in the absence of any educative propaganda on the subject. In fact they have hardly any idea as to the age of consent and but for the presumption of Law, *viz.*, ignorance of law excuseth none, it would be impossible to prove the factum of knowledge on the part of a culprit. Amongst the educated people, I feel that there is a feeling of dissatisfaction on the point that the age of consent, outside the marital state, is not more than 14. The force of opinion in this quarter is that it can be safely raised to 16.

2. (1) Within the marital state, the age of consent should not be raised beyond 13, looking to the circumstances under which the society, split up into various castes and sub-castes, has to labour these days. While in some castes there is an afflux of marriageable girls, in some the scarcity is terrible. Marriages being not permitted outside castes, sub-castes and in some cases even outside the folds in sub-castes, wherein widow remarriage is strictly prohibited, males are unable to think of a married life, either because of the scarcity of brides or because of the large price they have to pay for them, under existing customs. Under such conditions even the principle of Demand and Supply does not regulate the question and the result is that the male members of such castes have to wait to a fairly advanced age before they can manage to marry. The age of the marriageable girls being restricted to an age under puberty, the males have to take

up girls of 10 to 13 for their marriages, even at their advanced ages when alone they can afford a married life. Having married under these disabilities, a large number of these husbands, lose self control, and the marriage is invariably consumed before the wife is 14 if not earlier. While the desire of every lover of the country, having a sense of humanity, would be that this should not be, yet if the matter is penalized, in practice it will lead to horrible lying on the question of the age of a girl and will lead to the prosecution of several people who are really not deserving of a jail life and who can be respectable citizens otherwise. With the disappearance of castes and the prevalence of widow remarriage a time might come when the question can be rightly and profitably taken up. At the present date, it will be desirable to leave the age of consent as it is, within the marital state.

(2) As stated in my reply to Question 1, an advance can be profitably made in the age of consent, outside the marital state, by raising the age to 16. It is impossible to imagine that a girl under 16 is really able to understand the risk she is entailing upon herself by yielding to the temptations that are held out to her, by "Society fiends", who are out to inflict on her irreparable loss of social happiness and prestige, and in several cases transmit to her incurable diseases, which can also ruin her unsuspecting husband and her progeny to come thereafter. Again a girl under 16 is hardly able to prove threat which is meted out to her, by her ravisher, in the sense in which it ought to be proved within the meaning of Section 3, Indian Evidence Act. Everything considered, it will be quite safe to raise the age of consent, outside marital state, to 16 years.

3. The crimes of seduction or rape may not be frequent in this part of the country, but they can be and ought to be certainly reduced to a material extent. Crimes of seduction are comparatively larger than those of rape in this part of the country and I am afraid like several places in Kathiawar, even in this District and other Districts of Gujarat, a class of people carrying on a traffic in seduced girls, is coming into existence and organizing itself. So many crimes of this nature go undetected and when any prosecutions of cheating are launched, because of the fact that these girls are ultimately palmed off to half witted husbands on false pretences, they are compounded, as the offence of cheating is now made compoundable with the permission of the Courts concerned. After everything is considered from a business point of view, the traffic is found to be pecuniarily profitable, by the rogues concerned therein, and consequently they carry it on with impunity.

To the second part of the question, the answer must be in the negative. As a matter of fact the new legislation is not known to the masses, in the absence of any educative propaganda on the subject, and it is extremely doubtful, even if such knowledge, by itself, will make any reduction in the number of these cases.

The measures, I would suggest, though I am doubtful as to their ultimate success, are as under:—

- (a) Educative propaganda as to the existing state of law.
- (b) Creation of Social service bodies in village through the District and Taluka Local Boards, to educate and cultivate opinion on the subject in villages and to create a spirit to bring to light offences of this kind. The spirit should be supported by suitable rewards in fit cases.
- (c) Special rewards should be offered to the Police who bring to light or prevent offences of this kind.
- (d) Deterrent sentences in law Courts. ¹
- (e) By making cases of cheating arising in cases of "Seduced girls" uncompoundable.

4. (1—3) No. I would suggest, measures on the lines suggested in my reply to question No. 3, vide concluding remarks contained in (A to E).

5. Between 13 and 14 generally. Yes. Amongst the agricultural classes, who actually do the field work the age may be put down as between 14 and 15. This would include the Suni Boras and Bhils and Kolis of Broach District. Amongst the Bhils of Panchmahals the age can be safely put down as between 14 and 15—generally speaking.

6. Generally speaking the reply must be given in the negative, but instances may not be wanting amongst some classes of Brahmins, amongst whom marriages take place between couples labouring under a marked disparity of age between the husband and the wife. The price these people have to pay for a bride is anything between 2 to 5 thousand rupees—a sum which an individual of the community is unable to save, or more properly speaking unable to raise, before he attains a fairly advanced age—anything between 30 to 50 years. The bride selected, even then, varies in age, only from 3 to 10 years, unless the bridegroom is conveniently blind to the caste of the girl and manages to draw upon the business of somebody dealing in girls, who are brought up for the traffic, and who by associations, with the people who brought them up, themselves become participators in the crimes of cheating and thefts, to be perpetrated in regard to the property of the half witted, or the passion blind husbands whom they marry only for a nefarious purpose, as a result of a well worked out conspiracy. Instances though few, are not absent in some of the Bania Castes, residing even in towns and cities. With the disparity in age, the husband takes the child wife to his house, under “the make belief” to train her up according to his requirements, soon after marriage, and by the time the girl is 12 or 13, he feels he has waited too long for matrimonial happiness and begins to consummate the marriage, with the results too obvious.

Thus, while the reply to the question as it stands worded, ought to be in the negative, it must be read subject to the observations given above.

Such cases very rarely come to Court, and the Hindu method of disposing off the dead bodies—scientifically the best method for the purpose—frustrates the possibility of any chance of detection of such cases. I have however a clear case on the point within my knowledge and I will quote the same under Question 11.

7. I know of none and there can be none. A belief however exists in some Brahmin and other castes that the maidenhood of a girl must be destroyed before she reaches the stage of pollution, by reaching the age of menstruation. The belief has its origin in a debased custom, rather than any religious injunction, and it must also be admitted that such a belief now exists in very few cases in this part of the country.

The remaining portion of the question need not be answered.

8. The question can be fairly answered in the negative, as far as Gujarat is concerned. Beyond getting an auspicious date fixed for the bride to retire with her husband for the consummation of the marriage there is no ceremony, known as “Gaona” or “Garbhadan ceremony” existing in any caste generally speaking. The ceremony is known to exist amongst the Daxinis in some cases and where it does, the very publicity attaching to the ceremony, makes it necessary for the parties to see that the girl has attained puberty and is otherwise fit physically, for the consummation of marriage. Making the ceremony compulsory by some method, amongst all the Hindu communities, may prove itself a beneficial measure in preventing some of the great evils the bill in question seeks to remove.

9. The first part of the question must be answered in the negative. Puberty can never be synonymous with physical maturity. It is only a sign of maturity. The 2nd portion of the question is more for a medical man to answer in every individual case but generally speaking the age can be safely put down at 16 years.

10. 16 years.

11. Yes. The case of Imperator *vs.* Chrunilal Nagindas of Ankleshwar, disposed of by the Sessions Court, Broach, about 16 years back, is an instance of its kind. The accused was a respectable intelligent Bania. The case was

sent up under Section 304A, Indian Penal Code, as the age of consent under Section 375, Indian Penal Code in those days was 12 years. The accused (husband) had cohabitation with his wife and because of the absence of physical maturity, the vagina was torn leading to heavy loss of blood from the parts. The hymen was also ruptured and the girl becoming unconscious very soon, died within a few hours after the very first attempt at cohabitation. Some of the signs of puberty were visible—particularly the pubic hair. The accused was convicted under Section 304A and sentenced to 6 weeks' S. I. so far as I remember. The case had gone to the Hon'ble High Court, Bombay in appeal, wherein also the sentence was confirmed. The case can be had from the record of the Sessions Court, Broach.

12. The question as a whole must be answered in the affirmative. The baby-born nation the country is building up as a result of early consummation of marriage and early maternity, is in itself a serious handicap on the intellectual and physical progress of the people. The shortsighted boys and girls, youngsters with pecton shaped chests and the lot of them representing a miserable specimen of humanity, compared with the powerful men and women they have to compete in World competition, are the only ridiculous gifts to a country labouring under the disabilities, suggested by the question under reply. To solve the problem of over population in some of the countries in Europe, even the church people came forward to preach, "family prudence", as against the very. Christian dogma of "to live and multiply" and we have seen scores of neo-malthusian institutions springing up all over Europe. Why should therefore there be the absence of the same spirit in India, where early maternity is really destroying the very manhood of the country rendering her unfit for anything of world competition, much more so for self-Government, which presupposes power of self-defence. No doubt therefore, when early consummation and early maternity be prevented by legislation, as far as possible it is absolutely necessary that a vigorous propaganda for "family prudence" be started side by side, if not in place of "Baby weeks".

13. In my reply to Question No. 1, I have stated that the masses are ignorant as to the very legislation itself. Hence the question can be safely treated as redundant. But speaking of the layman's feeling on the question one can say that the answer in regard to marital cases will be in the negative, while in regard to non-marital cases will be in the affirmative. Educated classes and advanced communities would favour the idea of raising the age of consent of non-marital cases to 16 years.

14. This question can only be answered with reference to various castes and communities—castes which have an idea of a responsible life in regard to their children, can boast of its women, who do not favour early consummation of marriage for their children. Women of some castes who do not feel any such responsibility and who are anxious to see their daughters becoming mothers as early as possible, lest their daughters' husbands might marry again for children, are always anxious for an early consummation of marriage. It can however be said, that the opinion is getting against early consummation, but actual opposition all round, generally speaking, may yet take years to develop. Legislation may therefore be useful in this quarter, side by side with an educative propaganda, provided the legislation is worked out in slow degrees from time to time, without running the risk of sending to Jail desirable citizens, who only yield to a human passion, under social tyranny.

15. Yes. Difficulty is experienced very often. The birth and death register in villages and towns is no guide on the point, looking to the imperfect manner in which it has been kept, under the supposed supervision of the Town Municipalities and village Police Patels. In so many cases the question ultimately comes to be decided by a Hospital or a dispensary Assistant, now dignified by the term a medical officer whose study and experience in the matter is hardly perfect. This being so his opinion, is only what it can be and the matter is ultimately decided by the judge

and the assessors or the jury on the materials available. While I am not prepared to say that there is anything like miscarriage of justice on this account, I do believe that the evidence on the point can yet be made more perfect and almost beyond any doubt. I can suggest the following measures:—

(A) The authorities should be directed to see that the children are named in the birth and death registers. This may necessitate an inquiry on the part of the authorities, after a month of the birth of a child to know and note down its name. This will frustrate any attempt to palm off an earlier girl child for her younger sister.

(B) The examination of the girl for the determination of her age ought to be by the Civil Surgeon only, for the purposes mentioned in the bill, to reduce the chance of a wrong expert opinion to a minimum.

16. No. Again in view of my reply above as to the undesirability of raising the age of consent in marital cases at present, the question cannot arise.

17. Certainly. For extra-marital offences the present punishment is proper. For marital offences I would propose 3 years' imprisonment maximum. The imprisonment *must be simple* the reason being that the accused himself is the chief sufferer in the matter and that the parents of the girl being not alive to their duty towards their child, he should not be subjected to the rigorous of a jail life, for falling a prey to human passions and weakness. The punishment should be intended merely for the education of the masses and for creating a feeling of self control in the society including the accused concerned.

18. I would suggest that marital offences should be made triable by a first class Magistrate but with the aid of jurors. This would humiliate the accused socially, which would be a better curative punishment to the accused and a great education to the public. The method will in a way be an educative propaganda for the public. The procedure should be the warrant case procedure. The trial should be given a wide publicity and as large an audience, as the Court room can accommodate, should be attracted to these trials. The publicity can be given by notices on the Court notice board and on or round about the residence of the accused. The suggestion is merely made with a view to educate the public on the subject. It would be still better for the Magistrate to take up the cases as near as possible to the scene of the offence, which would be very often the residence of the accused.

19. *Vide* my suggestions (a) to (c) in my reply to Question No. 3.

20. No. Fixing the minimum age of marriage will be certainly more effective. This opinion will be more in consonance with the public opinion. It is besides easier to postpone marriage than consummation.

21. I would certainly prefer the latter, at the same time I would like to see the strengthening of the penal law, side by side, at proper intervals to eradicate the evils entirely in course of time. It may be that the necessary education may render the legislation futile; but even then legislation is always a desirable remedy.

Written Statement, dated the 10th August 1928, of Dr. HOMI S. DASTUR, The Dentiformi Pharmacy, Broach.

1. No dissatisfaction to my knowledge.

2. (a) There would be a general breakdown of the mother with inter-current diseases such as consumption and its allied diseases, anaemia, chlorosis, etc. Also the children are not fully developed and infant mortality becomes very high.

(b) But if the present law is corrected, and the age of consent be advanced, the mother and the child both may remain healthy.

3. Not that I know of. I have no experience about these.

4. It is difficult for me to say.

5. At the age of 14 years.

High classes of girls—earlier.

Low classes of girls—later.

6. (a) No.

(b) Yes.

(c) No.

Not that I know of.

7. No.

8. I have no knowledge of this ceremony.

9. No. The age of 17 years is generally considered to be enough to justify such consummation without injury to her health.

10. At the age of 17 years.

11. No.

12. Yes.

13. Not that I know of.

14. No, not so much as before.

15. It is difficult for me to answer these queries.

16. No.

17-19. I have no experience as regards these.

20. Legislation would be more effective.

21. It will rely more on the progress of the social reform by means of education and social propaganda.

Written Statement, dated the 12th August 1928, of Khan Bahadur Dr. B. H. NANAYATTY, C.I.E., F.R.C.S., Vice-President, Ahmedabad Municipality.

1. I believe there is a general dissatisfaction existing amongst the educated classes with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code.

2. (1) In my opinion there are hardly any circumstances which would now justify retaining the law of the Age of Consent as it is. It is one which to some extent is responsible for much suffering for the child mother and for increased maternal and infant mortality.

(2) In view of the educated public opinion demanding a revision of the present law and increase in the Age of Consent, an advance on the present law is largely justified.

3. Crimes of seduction and rape are occasionally heard of in this part of the country, but I cannot say they are frequent. I cannot definitely state how far the amendment of the law made in 1925 raising the Age of Consent to 14 years has succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. I am however inclined to believe that on the whole the amendment has had little deterrent effect.

4. In my opinion the amendment of 1925 raising the Age of Consent within the marital state to 13 years has been effective to some extent only in protecting married girls against cohabitation with their husbands—

(1) by postponing the consummation of marriage,

(2) also by stimulating public opinion in that direction,

(3) it has I think also succeeded in putting off marriage beyond 13 years of age.

To afford however a more effectual and satisfactory protection to the girls in these respects, the Age of Consent, in my opinion, should be raised to 16 years (if not more) and the term of punishment extended to a longer period if necessary.

5. Girls attain puberty in India generally at about 13 years of age. This does not materially differ amongst different castes or communities though amongst the upper and educated classes it is probably delayed by 6 or 12 months more owing probably to their minds being diverted from frequent talks concerning marriage and children to different healthier pursuits or occupations.

6. (1) In my opinion cohabitation is seldom indulged in before puberty,
- (2) it is more commonly indulged in after puberty, and
- (3) in some cases only before the girl completes her 13 years.

I do not know.

7. The Hindu Shastras enjoin early marriages. At any rate such is the prevalent belief in the Hindu Society, hence it is that early marriages are as a rule so common amongst them. I am unable to quote the authority or the nature of the injunction nor the authority proscribing any penalty for its breach.

8. *Garbhadan* ceremony is not as a rule performed in Gujarat. It is I am informed a practise common amongst the Maratha people in the Deccan. I am not in a position to say anything more on the subject.

9. The attainment of puberty is not always a sufficient or certain indication of physical maturity to justify consummation of marriage. In my opinion even 16 years of age does not in every case lead to so complete or perfect a physical development of the body as to justify consummation of marriage (with its probable usual consequences) without some injury to her own health or that of her progeny resulting in some cases.

10. I think 18 years would be nearer the age when the girl could be considered competent to give an intelligent consent to cohabitation, with a due realization of the consequences which may result from the same.

11. I have come across several cases where cohabitation before puberty and before full physical development of the girl has resulted in injury to her health and body and has also prejudicially affected her children. I have in my professional experience occasionally seen girls of 16 years mothers of 2 children and also 13 and 14 and 15 years who have at times given birth to one child at least. I have also been occasionally consulted by the mothers or relatives of these child mothers for the rupture or laceration of perineum, prolapse of the uterus and similar other troubles, chiefly as the result of delivery following early marriage.

12. There is no doubt that early consummation of marriage and early maternity are largely responsible for high maternal and infantile mortality. They also contribute to some extent to retard the proper intellectual and physical progress of the people.

13. Few people except perhaps some of the educated classes are aware of the amendment of the law in 1925 or of the law itself. In fact most of the people have no knowledge whatever of this subject. The further development of public opinion in favour of extension of the age of consent in marital and extra-marital cases exists only to some extent in the minds of the educated men and women only. In some cases the educated men have uneducated wives or wives of the old orthodox faith and in such cases it is usually the wife's voice which prevails and the husband's advanced views count for nothing. I do not think therefore that the majority of the people except the educated minority wish for extension of the age of consent in marital and extra-marital cases beyond what is proposed in Sir Harising Gour's Bill. Such childmothers are as a rule small in size and of a feeble constitution. I have also come across several such child mothers who have become the victims of incipient or advanced phthisis (consumption of lungs) owing to frequent parturition at too early an age

and prolonged suckling beyond the usual period of 10 or 12 months. The latter is a pernicious practice prevalent in India where the mothers generally (and in spite of medical advice) keep on suckling their children even when they are 18 or 20 months old to the detriment of their own and their children's health. Insanitary surroundings as well as the prevalent practice common to all classes (but now happily gradually disappearing from the educated upper and middle classes) of half starving the recently delivered woman or of keeping her on a diet ill suited to her requirements are additional factors which contribute to a low state of health and the development of consumption (of lungs chiefly).

14. Women as a rule (I exclude the European and the majority of the Parsi women from this) especially elderly and uneducated women favour early consummation of marriage for their children, partly because of the belief generally prevalent amongst them that religion enjoins this and that therefore girls must be married as early as possible after they begin to menstruate and that consummation of marriage must follow soon or shortly after. As stated above menstruation in India begins at an earlier age than it does in the colder countries. It must be further stated that the onset of menstruation does not necessarily coincide with the full physical development of the girls. Often menses precedes the latter by a period of 2 or 3 years.

15. Difficulties are no doubt being felt in definitely determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code. The difficulty in my opinion can only be partially lessened by raising the Age of Consent to at least 16 years and as the 2nd molars generally appear between 12 and 15 years of age, this fact may prove of some value in determining the age.

16. I do not think so. Medical men chiefly rely in determining age upon the presence or absence of certain set of teeth and as the canine teeth appear between 12 and 14 years and 2nd molars between 12 and 15 years, the raising of the age of consent to 14 years would only slightly lessen the difficulty or the margin of error in determining the age. If the age of consent were raised to 16 years the difficulty would be a little more lessened.

17. I am inclined to separate marital and extra-marital offences into different offences. I would take a more lenient view of an offence committed with one's own wife, than with an outsider; but the nature and amount of punishment in each case, I would leave to the lawyers to decide. I think for marital offences a fine with or without simple imprisonment ought to be enough.

20. In my opinion penal legislation fixing a higher age of consent for marital cases is likely to be more effective than the legislation fixing the minimum age of marriage. The former I think would be more in consonance with public opinion than the latter.

21. I would strengthen the penal law to some extent and fix the age of marriage of girls to at least 16 years. A further increase of age in the distant future may be left to the progress of social reform by means of education and social propaganda.

Letter, dated the 17th October 1928, of Mr. RAM RAI M. MUNSHI, Editor, "The Khedut," General Secretary, The Indian Farmers' and Peasants' Federation, Ahmedabad.

I beg to submit one particular question to the Committee.

The labour legislation protects women labourers in factory after confinement and give compulsory rest in addition to other maternity benefits.

It is an open fact that the mother after confinement requires complete rest not only from physical labour but from sexual excitements and exer-

tions also. In fact such rest is generally denied to them through the lust of the husbands that destroy health, physique, shorten life and weaken the progeny.

I would suggest—ono new and novel section of protecting the wife-mother from the husband.

“Any person having sexual intercourse with a woman within a period of six months from the date of her confinement, whether the child is alive or not should be punished with a fine of Rs. 500 or an imprisonment of either description of six months.”

Written Statement of Mr. B. C. SUTARIA, Agent, Batavia Sea and Fire Insurance Co., Ltd., Ahmedabad.

1. No.

2. (1) No.

(2) Making an advance on the present law, age of consent should be increased to 20 years for those ladies who are meant for immoral purposes. For married girls it should be increased to 15 years.

3. I have no knowledge of cases of crimes of seduction or rape. I propose to increase the age of consent as replied in question 2 (2).

4. (2) By stimulating public opinion for protecting married girls against cohabitation with husbands will take a very long time.

(3) Marriage age should be increased to 15. This will help to a great extent for protecting married girls.

5. Usual age at which girls attain puberty in this part is from 12 to 14 years.

6. (1) Rarely.

(2) Many, if married.

(3) I have no knowledge of such cases.

7—8. No.

9. Attainment of puberty is not sufficient indication of physical maturity to justify consummation of marriage. A girl can attain physical development after 2 years or more according to her constitution she gets puberty.

10. In India a girl can give her intelligent consent for cohabitation after the age of 15.

11. I know nothing of such cases particularly but girls, coming in contact with their husbands before full physical development generally die in a very young age; and if they leave any children they are very weak.

12. Yes.

13. Nothing in particular.

14. No.

15. I have no knowledge of such difficulties.

16. If proper register of birth be maintained by law no difficulty will arise.

17. I do not understand properly extra-marital and marital offences. But for offences in case of married girls those concerned be punished by fine only and in case of immoral purposes those concerned be punished by severe imprisonment and fine.

18. I cannot suggest anything in this matter.

19. Higher Police officers only be empowered for such cases and not without the consent of the District Magistrate, i.e., Collector.

20. Minimum age of marriage should be increased to at least 15 years. Public opinion will be in much more favour of the marriage age of 15.

21. Social reform by means of education and social propaganda will tell upon to certain extent but at the same time there should be a Penal Law.

Written Statement, dated the 13th November 1928, of Mr. G. A.
GHATGE, Jaya Baug, Baroda.

1. A dissatisfaction is certainly there among the literate classes particularly amongst those persons who have the opportunities of handling cases under Sections 375 and 376, such as the Police Officers, Lawyers, the Judges and the like. Illiterate classes seem hardly to apply their mind to the subject barring cases of those guardians whose children have been victimatised and who have thereon felt the injustice of dividing the consent line between 14 in the case of any person and 13 in the case of husband. 13 and 14 are hardly the ages when the females have developed any intelligence, knowledge either of themselves or the world in general. The physical development of boy or the mental development of the brain at these ages does not show any marked difference in the thought or act or behaviour of the child. A child of 15 and 16 has in most cases the same mentality, the same bodily development excepting a few parts of the person. Therefore it is hard to accept that the age 14 and 13 is an age capable of free consent being given after full understanding of facts.

2. I see no justification in retaining the Age of Consent as it is at present. From 10 to 12 was a jump taken so old as 1891 (*vide* Act 10 of 1891). Full 34 years were taken to bring it to 14. Times are far changed and a jump which once required long 34 years has created an oppressive feeling for that age of 14 within a short space of 3 years. The advancement is necessitated on account of the growth of education and the widening of the mental horizon after the great war. The world in general has now realised that the women could play an independent part in all the activities of a nation. This necessitates the nation's charge of putting forth children of full development. A girl of 10 who was put forth as marriageable commodity is no longer to be seen and parents have begun to think that a girl of 16 should be put up to a marriageable market. All these circumstances do necessitate making an advance to the present law.

3. Seduction cases are frequent, but not the rape. The age of 14 has not been successful in preventing or reducing the cases. I am in complete accord with the proposal to raise the Age of Consent as is in the proposed bill.

4. Cases of rape in marital state can hardly see light. The married girls therefore deserve greater protection than the one extended to them till now. The consummation of marriage has not been yet postponed in most of the communities because of the 13 age limit, but it has stimulated public opinion on the point and the spread of education along with the statutory prohibition has succeeded in putting off the age to marry beyond 13. To avoid any consummation of marriage before this age it is necessary to have some Marriage Bill prohibiting marriages before 14 as is done in the Baroda State. Such a bill is a necessary precedent for achieving the object for which the age limit has been increased in the Penal Code. Public opinion is always slow in India and unless some practical bar in the form of a legislation is erected, the Public will not rise up to the occasion and see that it is not in the interest of their own children that they should allow marriages to be consummated before the statutory period of 14 years. The present age limit of 13 has certainly created feelings in some community to have no marriages before 13, but this is not a Universal Rule. Particularly in uneducated classes the present bar has had no salutary effect as desired.

5. The age of puberty is usually between 13 and 14 on this side of India. Classes and communities don't make much difference in this respect. It is the individual growth of the girl that contributes to her coming out.

6. Cohabitation before puberty is uncommon, but soon after puberty whether it has appeared at the age of 12 or earlier, the couple is allowed consummation of marriage as a matter of right. This is mainly due to the

prevailing notions that the puberty means full development in a girl and opening of the portals of marital happiness. Cases of marital cohabitation before 13 do hardly see light as it is to no party's interest to complain about them.

7. The practice of early consummation of marriage at puberty is due much to the religious injunction. Before puberty cohabitation hardly takes place.

8. The Garbhadhan ceremony is now-a-days hardly performed excepting in few orthodox families. It is meant to be anterior to the consummation of marriage; but in practice it is posterior thereto. It is performed at the puberty or soon after the puberty. The present mode of living and the hard struggle of life, together with the dismemberment of the joint families have led to the consummation of marriage even before this ceremony; and the couple being left to themselves can hardly overcome the temptations which their lonely companies afford to them. The Shastrie rule is to celebrate the Garbhadhan ceremony on or before the 16th day since the attaining of the puberty.

9. The puberty ought not to be the starting point for consummation of marriage. The body needs to be developed for a couple of years and over after puberty for enabling the girl to bear all the burden of the motherhood; consummation of marriage would be justified after a girl has completed her 16th year. At least 2 to 3 years must elapse since the menstruation of the girl to give her a fruitful bed for bringing out a healthier generation.

10. Intelligent consent to cohabit can only be had after 18 and not before that. All consents given before this period is either given under misconception of facts and the easy mentality of a girl to submit to the wishes of her husband or the paramour. Intelligent consummation as such can come to a girl only after 18 and certainly not before.

11. Many cases of cohabitation before puberty have been noticed. The injurious effects on the body of the girl in having made her a crippled creature and the gait of her walk being made crooked are daily noticed even in streets. All that is due to premature consummation. All such cohabitation is always injurious to the health of the girls. The progeny produced is always weak and rickety. The injury is usually noticed on the lower part of the body particularly in the case of those girls who are forced to cohabitation at or before 12. The womb not being developed to an extent it ought to be, the progeny is necessarily a deformed progeny.

12. There could be no two opinions on this point. Maternal and infantile mortality is all due to these causes. An undeveloped and raw mango seed if grown does not bring forth full grown mango plant and the fruit it bears is always crippled and the life of such a girl is also short.

13. The public opinion has much developed since 1925. I would welcome a measure increasing the age limit. The feeling is general and most acutely felt by men in profession and Police Service. Cases of consent in cohabitation before 16 has always elicited sympathy for the girl and an apathy towards her ravisher.

14. No. The spread of education and the cosmopolitan view of living have helped a lot in making women averse to early consummation of marriage.

15. Great difficulties are daily experienced in fixing the age limit to 13 or to 14. The medical opinion based on test other than X-Ray test is never emphatic.

Even the X-Ray test is a sure test only after 16 and not before. Prior to 10 it is all a guess with laymen as well as with the experts. The remedy is certainly in raising the Age of Consent to 16 completed. The registry of the birth of children ought to be insisted upon very strictly and omission to register birth should be drastically treated with.

16. Age of Consent for all purposes should be 16 and not even 14. In that case the difficulty of determining age would be much removed. All what is guessed in Courts now will then go into a pale of certainty. That will also protect the interest of those persons who by their immature age are not in a position to understand their own interest.

17. Yes. It is advisable to differentiate between both kinds of offences: in one the opportunity is sought and in another it is offered. The punishment should therefore vary as it is used under the Penal Code. The present maximum is alright.

18. A difference of procedure is desirable. In extra-marital offences the present procedure would do. The marital offences should be dealt with greater secrecy by having a camera proceeding without a Jury. The doings between husbands and wife would require greater delicacy and sacredness of handling.

19. Greater safeguards than those already existing are hardly imaginable. On the other hand the misdoings between husband and wife should always be open to compromise. In making the same an uncompoundable offence the feeling and relations between husband and wife would be impaired for ever, both being estranged from each other, a set of circumstances which are not at all desirable in the case of any community, which holds marriage sacrament and not a contract. The publicity to the matter would be a sufficient disgrace and punishment to the husband. An erratic husband will certainly get his due should he persist in his games against the wishes of his consort.

20. No. The penal law of consent would not be so effective as the law fixing the marriage age limit. The latter would be a most effective measure in bringing about a desired effect. The public, at least the intelligent public, would hail the latter. Most of the penal cases go unreported, undetected, and unpunished. The marriage age limit would be a very effective bar.

21. The existence of the penal law is absolutely necessary, particularly in the case of those persons who have never independently thought of themselves. Of course social reform, education and propaganda are most desired factors for getting the desired object and they must, side by side, educate and stimulate the public opinion on the subject. Either alone cannot achieve anything. Both will have to go hand in hand.

Written Statement, dated the 15th September 1928, of Rao Bahadur
BHIMBHAI RANCHHODJI NAIK, M.L.C., President, District
Local Board, Surat.

1. There is nothing like satisfaction or dissatisfaction with the existing law as to the Age of Consent, as most of the people are unaware of the exact nature of the law.

2. (1) Not in favour.

(2) The Age of Consent in regard to sexual intercourse with a stranger should be raised to sixteen instead of fourteen, in clause five of Section 375, Indian Penal Code, as it would prevent immature prostitution and adultery, while a girl is not old enough to give intelligent consent. I am not, however, in favour of raising the Age of Consent to 14 in the case of husbands.

3. The crimes of seduction or rape outside the marital state are not frequently coming to light in this part of the country. I am, therefore, unable to give any definite reply.

I am unable to say what effect the Amendment of Law in 1925 has had.

4. (1) Unknown, though I do not think the amendment had any appreciable effect.

(2) Yes, a little but only upon a few intelligent people.

(3) No, for several other reasons, such as social custom, belief in a particular religious injunction, a desire on the part of parents of 50 and above to see their children settled in marriage during their life-time, difficulty of getting mature husbands in some communities, etc.; which yet loom large in the average public mind. But the general practice among intelligent classes now is in favour of marrying their girls at or after 13 out of regard for their intellectual and physical development, and effect on their progeny, etc.

No other steps suggest themselves to me except educating public opinion on the law and on the objects in framing the law.

5. At about 13 to 15. I am unable to state how it differs among different classes, castes and communities.

6. (1) Not generally, except in the case of some adult husbands.

(2) Common.

(3) Not generally, except in the case of some adult husbands.

Rarely if ever and it is not very likely that such cases would go to Court, as the conviction of a husband would be detrimental to the interests of the wife herself.

7. The majority of the Hindu community in this part believe that there is a religious injunction to consummate marriage at puberty. I am unable to quote the exact religious authority, but I understand that "Manu Smriti" styles non-consummation at puberty as a sin called "Bhrma Hatya" (भ्रमहत्या)।

8. It is performed not among Gujeratis, but among Deccanis at or just after puberty.

9. This is more a question for a medical man than a layman.

10. After 16.

11. I have come across such cases in case of girls aged 13 to 15. They were affected with consumption, puerperal fever, etc.

12. Yes, to a great extent.

13. Yes, but not as a result of the Amendment of the Law in 1925. It is confined however to intelligent classes only.

14. Yes, but not before puberty.

15. The difficulties mentioned can, in my opinion, be minimized if the age is fixed at 16.

16. Yes, if the age be raised to 16.

17. Yes.

18. I would suggest that the trials of husbands should be in camera.

19. In case of husband criminals, I would suggest that they shall not be arrested without a warrant from the District Magistrate.

20. Higher Age of Consent is likely to prove more effective and in consonance with public opinion.

21. I would prefer the latter course.

Written Statement, dated the 10th September 1928, of Mr. NAHAR LAL D. PARIKH, M.A., LL.B., B.Com., F.R.E.S., Godhra.

1. Yes. There is some dissatisfaction owing to the inadequacy and consequent inefficacy of legislation, which ought to provide parallel lines to reach the desideratum for prevention of breaches against sexual freedom in marital life. Mere raising up of age under which no free or unfettered

consent for sexual intercourse can be validly given would be of little use, unless the marriageable age has also been simultaneously raised. All that is connoted by a free or unfettered consent is the giving of the same, having regard to a due realisation of consequences. No wife can be expected to have any regard to the above sense, if by her marriage she has vowed and prepared herself to married life with her husband, and the consummation of marriage follows the natural course from marriage to sexual intercourse. This being the case, practically it is futile to expect any prevention of sexual acts of such consummation of marriage below a certain age, if marriageable age is not increased above that.

2. The circumstances which should justify fixing of an age limit for valid consent to sexual intercourse, being given are such as would determine the consciousness of a feeling of responsibility with regard to the consequences of this sexual act, which is presupposed before a due realisation thereof is had in the natural course. Sexual life betokens sex-hunger, just the same way as dinner betokens food hunger, and an appetite for the latter is on the same footing as passion, for the former when such passion can be legitimately indulged in, is a matter to be determined not only concerning the persons indulging in, but also the community whose well-being is at stake. Rightly thought, the age of puberty is not the Age of Consent, nor should it be so necessarily, because puberty does not by itself alone constitute fitness for sexual intercourse. With puberty begins only the development of the girl into a woman, who is only so developed fully at the age of sixteen or eighteen, when so well-formed she may be likened to be ripe as peach. Until this ripeness or full development is had, all sexual intercourse is both a sin as well as crime. The sanctions of religion are to meet cases of commissions and omissions in the matter of sins; but so far as the community is concerned, the state should provide sanctions for crimes in the cases of all breaches of sexual morality when a girl is indulged in sexual intercourse and not a woman. So taking a lowest estimate of the age of womanhood which should determine the Age of Consent, the age may be put at sixteen years, for which the present law may be advanced at.

3. They are. All seductions generally aggravate into rapes for purposes of extortion or any other ulterior motive, when parties are dissatisfied with one another through some reason or another after the act actually takes place or even in the absence of any such act either.

For the above reasons cases of rape outside the marital case are not believed to be materially concerned with the raising of the Age of Consent except for the purposes of the Court enabling it to determine exemption or otherwise for the valid consent being given.

The same for the seduction of girls for immoral purposes. However, the raising up of the Age of Consent surely takes the defence plans out of the cases of rapes or seductions prosecuted for.

4. (1) No.

(2) Apart from that, the enlightened public opinion surely is for postponing the consummation of marriage, even in cases of early marriages, to a period of maturity which is generally considered to be between the years fourteen to sixteen. The social customs of the community generally tend to avoidance rather than a continuation of sexual life, before the age of eighteen even though the consummation of marriage may have taken place earlier. Law has been little formulative of public opinion in this matter.

(3) That also does not necessarily take place.

The marriageable age should be increased to be at the age of womanhood when alone proper consent could be validly given, having due regard to the responsibilities of married life, and to the due realisation of the consequences following the sexual life.

The age of marriage and the Age of Consent should move on a parity of years, when alone sexual morality may be consciously observed.

5. At the age of thirteen or even fourteen in some cases, puberty generally appears, but in some cases puberty appears among the country folk at a later period. It all depends on the environments one lives in. The country folk have more work than leisure to permit them thinking of sexual life, and that feeling has an effect on the appearance of puberty.

6. (1) No.

(2) Yes; but puberty rarely takes place before the girl completes thirteen years.

None.

7. Rather, religious injunctions and moreover social customs are to the contrary, there being no such authority. Rajaswala woman is to be married into some sort of companionship, that's all. The Hindu marriage is a companionate one. Marriage with Hindus generally does not mean at all its consummation to follow it as honey-moon. It only weds the parties into a sort of companionship and sexual life when it begins has a broken career, at least till motherhood when alone wife comes to stay in the family of her marriage. The Hindu wifehood partakes of the qualities of an ideal, since marriage has a consecrated outlook, and so though sexual life follows marriage, it is not the essence of it.

8. The Garbhadhan ceremony is unfortunately not performed on this side. It cannot, in any case, be anterior to the consummation of marriage. The ceremony coincides with it, rather is a prelude to it.

Yes; certainly after the attainment of puberty and when such ceremony is performed or consummation of marriage takes place without such ceremony, some period after the attainment of puberty is allowed to be passed.

9. No. At the age of sixteen or a couple of years after puberty, may a girl's physical development be considered fit for such consummation.

10. 16 years.

11. Cohabitation before puberty is not generally the case here. Increase of cohabitation after puberty, but before full physical development of a girl, not only ill-health or breakdown of her body after some years follows, but the progeny is deteriorated both qualitatively as well as quantitatively.

The details of such cases are writ large in the life-histories of the many patients frequenting the Hospitals. It is the helpless child who pays the toll, and the victimised woman who pays the price, in all such cases. Want of regard for celibacy in married life aggravates the lot of the poor wife, who is the victim married to bear the husband's burden of unthinking passion.

12. Yes; that is the patent evil responsible for the high maternal and infantile mortality, with a deterioration in the species of the progeny which vitally affects the all-round progress of the people in the moral and material as well as intellectual and physical aspects of national life.

13. Yes; among the educated classes.

14. Generally not. Sometimes in their eagerness to be grandpas and grandmamas parents like their children to have early consummation of marriage, the mother oftener being a sinner in this respect.

15. Medical examination is a sure and a reliable test as to the proof of the age of girls; difficulties in such determination of age by medical examination may be removed by a compulsory marriage certificate wherein an entry regarding age may be provided for as necessary. A comprehensive marriage law requiring marrying parties to obtain certificate for marriage on due proof of age and sex development is a necessary plank in any social reform platform for national uplift.

16. Certainly. The difficulty mainly centres round the period of puberty. When puberty is not had, opinion varies, and with it the determination also. It is all then a guess-work. At 14 or 15 puberty is the general rule, absence of it is an exception. Hence, if the Age of Consent is

raised to that period the difficulties may surely be minimised if not removed altogether.

17. Certainly. The punishment for marital offences is low; and being compoundable offences, the prosecution for such marital offences always ends in some reward being paid to the complaisant husband which is putting a premium on marital immorality. It should impose imprisonment besides payment of fine.

18. As stated above, the marital offences, should be non-compoundable, not even compoundable with leave of the Court.

19. As above, the fact of the marital offences being non-compoundable, prosecution for them cannot be for black-mail; and law as regards sanction for false prosecutions should be applied rather liberally. As stated before, both the ages for consent as well as for marriage should be the same. However, the former of the two alternatives would be favoured here.

21. Both, side by side, penal law is to deal with what subjects ought not to do. It is not the code of morality to prescribe what people ought to do. That is for religion to generate moral consciousness in the community. In short, all penal legislation is a negative law, hence, the progress of social reform works on two parallel lines of legislation and propaganda, the latter being to arouse a social consciousness among the community through education and example.

Written Statement, dated the 22nd October 1928, of Mr. BHIMBHAI DAYABHAI MEHTA, Ahmedabad.

1. The marriage age for boys and girls should respectively be fixed at 21 and 16.

2. These alliances should be strictly subjected to medical examination and approval. It is quite probable that a boy may be 21, but may also be congenitally imbecile who would naturally be physically weak and mentally deficient. No matrimonial alliances of boys and girls, born of parents suffering from frightful diseases, such as, tubercle, leprosy, and other venereal affections should in any case be permissible, and any such alliance clandestinely made should be considered an offence under law. This would put a stop to the union of diseased couples.

Then the question would arise whether these people should remain unmarried all their lives. To this my reply is an emphatic Aye; as, they would be serving no useful purpose other than of adding either to the number of widows, or adding to the heavy roll of crippled creatures already existing in the country. More valuable information will be elicited from the medical reports to endorse my views, that the general health of the people is very weak and the average physique very fragile.

4. Any exercise of matrimonial rights by a husband on a wife aged 14 should be penalised by law, and if the acquiescence of the parents of the husband, in the act, is established they may also be adequately dealt with.

5. Our old age social customs have been so deeply implanted that any attempt at their eradication would evoke a chorus of condemnation from the mass of social wisecrackers who would refuse to listen to any common sense or reason. I may here assure you Sir, that any agitation of a like nature would be perfectly powerless and puerile if the endeavour has the healthy support of a legislation.

Our people have neither the will nor a desire much less any inclination to improve and advance and as such they have never realised the supreme significance of self elevation, and have therefore taken shelter under the authority of Shastras and Smritis, of which, they are themselves, not in the know of.

It is therefore obligatory on the sober section of the society to gird up its loins and drive out all the rubbish that has been depriving the institution of all its riches. It is high time now, that the age limit should be enhanced and legislation accelerated to prevent the further decay and degeneration of the people of the country.

P. S.—In extra-marital cases the age should be fixed at 21.

Written Statement, dated the 18th October 1928, of Mr. NATWAR-LAL UMIASHANKER JOSHI of Dakor.

1. Generally the masses are not aware of the law of the Age of Consent, but the educated people are dissatisfied with the present scope of the law.

2. There should be an advance in the age of each case of four or five years in the present law in force. Reasons are—

(1) By the present law young husbands and wives of about 18 and 15 respectively are allowed the cohabitation. This tells on their health and progeny. I have never seen a first born child entering into its second or third year of its life.

I see this fact with my open eyes for the last six years and if at all the child survives it is of very poor health and constitution and fickle minded.

(2) Boys and girls are forced indirectly by parents mainly by female-members to go under the cohabitation reluctantly at early age and thus are led to ruin and if any boy revolted against this he is mocked and considered as an invalid.

(3) No.

Because there is no vast difference of age between the old and new law in force.

Hardly any rape is committed with a young girl of 13 or 14. The modesty of the girl might be violated.

4. The marriageable age should be raised upto 18 or at least 16. Otherwise without fixing the age they may come into contact and be enticed or forced to go under cohabitation.

(1—3) No.

5. Generally from 14 to 18.

In labour classes and peasants they attain puberty very late and even sometimes they are without the signs of womanhood upto 17 or 18.

6. (1) Generally rather say mostly.

(2) Those who are left out by any special circumstances.

(3) Rarely.

7. Mostly not. Parents follow the traditions and are very eager to see their sons and daughters-in-law united as early as possible and if they do not, they are led to thinking the generating organs of only the female defective.

8. No. It is included into Simant ceremony.

9. No. Not the least. It might be considered so in old days. Even Manu considers the girl fit for marriage after three years of attaining puberty then what of the consummation of marriage?

At least after 3 or 4 years and properly 5 or 7 years, then and then the mothers can go to play football on the very next day of the delivery.

10. Not younger than 18 years.

11. In many cases hysteria is common and generally the mothers are broken down of their health. In some cases girl-mothers suffer at the time of the

delivery for five or seven days. It is certain to my mind they lose the beauty and vigour of youth completely for one or two years after the delivery and if she is fertile there is no hope to recover the loss at all.

Cases in detail.

(1) Two mothers aged 20 passed away in the second delivery though they were given full surgical help both times.

(2) One ended in life aged 10 at the first delivery with the throes of it.

(3) One passed away at the fifth or sixth delivery suffering the throes for all and every time.

(4) In many cases say 40 per cent. of girl-wives between 15 and 20 suffer from hysteria.

12. Mainly responsible is that. The other causes affecting are poverty, the worse treatment and confinement for three weeks at the time of delivery and affecting to the progeny are continuance of cohabitation in pregnancy, ignorance of careful nursing and poor nourishment.

13. Only in the educated people the necessity is felt.

14. Yes.

15. I don't know, but I think birth registers should be made very accurate and marriages should be registered in another with a small fee to check the ages of the bride and the bridegroom from birth registers.

16. No reply.

17. Yes. They should be treated under separate rules or Sections of Indian Penal Code and the punishment should be the same as it is to-day.

18. In marital cases not the police, but the inspector may arrest and the cases should be made compoundable with the permission of the Court and triable by the Court of Session, but if matrimonial Courts are established then they should conduct the cases.

19. If the complaint is not proved the informant should be taken to task.

20. Both are necessary for if, the Age of Consent is fixed and not the minimum age of marriage then there is more possibility of breach of law, and if the latter is fixed the cohabitation will be allowed at the age which is greatly injurious at that age and to make them wait until she is physically developed, but if the minimum age be fixed 16 there will be no practical difficulty for the marital cases taking granted the extra age is fixed 18.

To orthodox any law may not be in consonance, but for their sake they should be enacted as other cruel practices are abolished.

21. I would on the penal laws and along with it some social propaganda should be made, but I have no hope in educational work for it is the only thing in which Government lacks in to part with the ruled.

Statement No. 2 by Joshi Natwarlal Umiashanker representing the public of Dakor.

A meeting of the Dakorians was held under the auspices of the Sahitya Sabha, Dakor, on the 24th instant.

In the introduction I pointed out the nooks and holes in the society and their evil consequences on the society and in the conclusion asked the public to force the Government to interfere in the social condition of the Indians as its duty.

N.B.—I have not rewritten the answers with those the meeting agreed with mine in the first statement herewith attached and wherever it differed I have answered the questions in their words.

Answered by Natwarlal Umiashanker representing the public meeting of the citizens of Dakor, dated the 25th October 1928.

2. Sixteen should be the age in the marital cases and 21 in the extra-marital cases. Reasons are the same as in my first statement.

3. No answer.

4. (1—3) No.

The age should be raised to 16.

5. From 13 to 16.

In labour classes it differs sometimes there the girls are even without the signs of womanhood up to 17 or 18.

6. (1) Rarely.

(2) Mostly.

(3) Yes. At times.

9. No. At least after 3 years.

10. 21.

11. There is no particular case to be quoted here, but 95 per cent. of the couples have cohabitation soon after the puberty and thereby the females lose their health and be a prey to diseases like hysteria and many others and among Hindoos delivery is now-a-days considered a very dangerous thing.

13. No.

15. Birth registers should be accurately maintained in each village or town.

16. No.

17. They should be separately conducted as the legal men advise the committee.

18. No. answer.

20. Both are necessary.

21. Both.

Written Statement of Mr. NAGINDAS PURUSHOTTAMDAS SANGHVI, Secretary, Sanatan Dharm Sabha, Ahmedabad.

1. No. But people insist that no kind of consent should protect any outsider from severe punishment. This is the view of the Hindu Social Morality. Here an outsider means one who is not the married husband of the consenting female.

2. This is a question which I consider as two horns of a dilemma. (1) Because the law as to the marital pairs is a wholesale defamation of the Hindu Society. Really such cases very rarely happen in the Hindu Society, and they can be dealt with according to the gravity of the injury actually caused, and not by making it a separate offence that places the husband also on the same par with an *ab initio* immoral outsider. (2) So, equally bad is the fixing of any age for making the action of such an immoral agent as sanctioned, for immorality at any age, by law, which is an open disgrace. Hence if the advance on the present law is desired, it should be made on the line that would lean towards guarding a female for ever against an attack or enticement from an outsider.

3. I have no facts and figures to rely upon in replying this third question. But I am sorry to observe that after the introduction of the modern system of education social libertinism has progressed extremely, and is the result of the western freedom of thought. To make the law effective, it must be exercised without leniency.

4. Even without the amend of 1915 raising the Age of Consent, there was no cause for such wholesale defamation of the married pairs in India.

(1) Postponing consummation is erring on the wrong side, and that even in vain.

(2) Stimulating public opinion is the only best method. The restoration of the ancient Brahmacharya Ashrama would be the best to serve the purpose.

(3) Putting of marriage beyond 11 even, is a direct blow on the Hindu Religion and feelings, and making any law on the subject is curtailing the facility of observing the orders of the Hindu Scriptures.

The step to be adopted in this case is the restoration of Brahmacharya Ashrama as stated in (2) of this answer.

5. Girls attain puberty from their 12 to 14 years of age according to their constitutions, castes, etc.

6. Cohabitation is not common in any of the three cases referred to in this question.

7. Consummation before puberty is not enjoined by Religion. But at puberty it is enjoined after menstruation, if both the wife and husband are in good state of health. Then, it is a duty, and one who shirks from it, has to perform as penalty a certain ceremony called Prayashchitta (Penitence).

8. Here "Gaoua" is called "Ana" (आना) ! The staunch Brahmins do perform the "Garbhadhan Ceremony" at that proper time of "Ana" (आना) ! But not to go to one's spouse soon after menstruation is a sin of which the husband and wife both are conscious religiously. This is true of all castes.

9. Menses in most cases is a sufficient indication of physical fitness. While in particular individual cases no strict rule could be laid down. There the discretion of the parties concerned is the best guide. No law serves the purpose.

10. It depends upon the instructions from elderly ladies related to her. But mostly the passion is the helmman here, and legal interference in marital cases is surely to become the root of secret immorality.

11. My answers 9 and 10 are applicable to this 11th question also in their purport. It is most difficult, rather impossible to draw lines between such cases as are referred to in this question.

12. Not as a general rule. But it is certain that:—

Hard work and little gain,
Invite the death, disease and pain.
Want and worry with scanty grain,
Spoils the body and mars the brain.

13. There has been no such development. But the Reformers, mostly the Arya Samajists, who try to win over the orthodox, use the argument that to secure the convictions of Mohamedan Abductors, the Age of Consent should be extended (vaguely, so as to include the marital cases also).

14. No. Mothers guard their daughters more than the legislation does.

15. Since the Birth and Death Registration the difficulty has greatly decreased. If the local Registrars and Police work together, the said difficulty would almost vanish.

16. The difficulty would increase a bit more, because females at 14 and thereafter appear somewhat older than they actually are.

17. I with my countrymen (excluding only a handful of the Reformers), am against any legislation as to marital pairs. Let the non-marital cases be treated with utmost harshness.

18. Answer is the same as above.

19. The answer is the same as above with respect to the marital pairs. In non-marital cases the female honour should be most cared for by the procedure.

20. We all Hindus. (excluding the handful of the reformers), want no legislation in such a delicate social matter. The rules of our classes and castes, guard us better than the meddlesome enactments of legislature.

21. No legislation is desired for by the bulk of the nation, who has got its own social civilisation. Let the social reformers reap the bitter fruits of their foreign innovations.

Written Statement of Sardar NAHARSINGJI ISHWARSINGJI
alias **NASHRULLAKHAN, Thakore of Amod, President, District**
Local Board, Broach.

1. On principle, in a country like India, which is under the influence, mostly if not wholly, of sentiments based on religious susceptibilities and where the economic state of the masses is far from satisfactory, nay distressing, I am not for legislation which is directed to create interference with the domestic life of the people. Such measures are mainly connected with social reforms and their success largely depends upon the spread of education and removal of illiteracy of the masses. In order to bring about the results sought to be attained through the legislation on the lines proposed by the Committee a sense of appreciation must first be created otherwise it will be like throwing pearls before swine. With the advance in education in some communities the age of marriage has automatically gone beyond 16 years and early marriages in such communities are few and far between.

So far as the Mohamedan community is concerned, it may well be left to take care of itself. It has got prescribed rules and regulations to guide and guard it against the social evils and any legislation if forced upon, in contravention of the wishes of the community will lead to distrust and dissatisfaction and may ultimately result in interpreting such interference as breach of trust. The State is supposed to be the Defender of the Faith and any legislation which is intended to affect the laid down tenets of Islamic Law will be looked upon with suspicion and will create disaffection in the minds of the followers of Islam.

However, in view of the fact that legislation of a kind similar to that proposed to be suggested by the Committee has been in force in the past, the only question now to be considered is only whether an advance should be made on the present Law and my remarks on this point are as under:—

(1) The Age of Consent should be raised from 14 to 16 years to guard against the offences of rape and kidnapping and within marital state, the age should be raised from 13 to 14 years.

(2) I do not think it is desirable to limit the age of marriage. There may be reasons which may necessitate early marriage. The purpose sought to be attained will be served by raising the age of consummation of marriage.

I am not prepared to admit that heavy mortality amongst females is mainly due to early marriage. The masses are divided into three classes according to their economic state, i.e., Rich, Middle and Poor and each class suffers for reasons entirely its own.

Lastly, looking to the backwardness of the people I must say that under no circumstances should the Police be allowed to take notice of the domestic wrongs. The remedy should be at this stage left entirely in the hands of the parties aggrieved. Otherwise, many evils will find room for mischief, and the attempt to discard one devil will bring in a trail of others.

Written Statement, dated the 24th October 1928, of Khan Saheb
MOHAMAD IBRAHIM MAKAN, Landholder, Amod.

1. No.

2. Some of the circumstances which in my opinion justify making an advance in present law are:—

(1) Physical deterioration of the communities addicted to child and early marriages and premature consummation.

(2) (a) Economic strain—Since the year 1832 (when there was a famine in Gujerat), there has been progressive rise in the prices of commodities and foodstuffs, and at each successive famine they have jumped up. They

reached their climax during the War, and have not fallen to the prewar level and are not likely to reach that level high enough for a poor country again. Simultaneously there has been a progressive rise in the standard of comfort, and "wants" of the people have increased. The wages have not advanced in the same proportion as the prices. The saving capacity of the people shows a corresponding decline. The family budget can be balanced with difficulty, and deficits are not uncommon. Disintegration of joint families is going on apace, and the struggle for existence is becoming keener day by day. Owing to the demands of professional and vocational training the age at which male members of a family become wage-earners has risen. The paterfamilias who is the only bread-winner in a normal family can meet the varied and various "claims" of his own children with difficulty, if not worse, and he does not think it a blessing to be burdened with the maintenance of the children of sons and grandsons. The feeling is growing that sons and grandsons should, as far as possible, be bread-winners first and fathers of families afterwards. It is felt that sterility is preferable to fecundity, and amongst the politically-minded sections of the people the idea is growing that it is the duty of every native of India and not of particular races or communities to rear citizens healthy and physically strong and capable of rendering military service. It would not be possible to exhaust all the circumstances. It is a sign of the times that early marriages and early consummation are unpopular.

I am not recording my individual opinion, but I am voicing the opinions of the large agriculturist Sunni Bohra community which forms the bulk of the Muslim population in my district. And, if I am permitted to say it, the Hindu population is at one in deeming the evil.

3. Crimes of seduction or rape are not frequent in my part of the country—the other questions do not survive, as the evils indicated therein are rare in my part of the country.

4. The amendment of 1925 has been effective in the directions indicated in (1) and (2).

As regards (3), putting of marriage beyond 13, the law has been in force for such a short period that it is difficult to say that the marked tendency to raise the age of marriage is due to the amendment of 1925 or the awakening conscience of the people.

5. (1) In my part of the country girls are generally taken to have attained puberty when they menstruate.

(2) No.

6. (1) No.

(2) In several castes cohabitation is common soon after puberty, and if the girl menstruates before 13, and if there is no disparity of age between the couple, first cohabitation takes place before the girl is 13. These cases do not come to Court.

7. Barring a few very orthodox Brahmin castes, the practice, wherever it exists, is not attributed to religious injunction. The practice rests on a bad custom. I am not qualified to speak on religious injunctions of any community, but it is notorious that reformed scholars say that the orthodox interpretations are wrong, and orthodox scholars pay back the compliment.

8. Gaona or Garbhadan ceremony is usually not performed in Gujerat, and not at all amongst Mohamedans. It is an orthodox Bramanical rite performed in Maharashtra. I am told it is performed after first menstruation and is anterior to consummation.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Weak girls often menstruate early. The age of 16 is the minimum in my opinion for a girl of normal health.

10. At 16.

11. Watch any ceremonial processions or festivals where females congregate, watch the females of certain communities (e.g., Bhatias in Bombay) in which

the practice prevails with the babes on their arms, and you see the consequences. The average height of males 5'x3" and the average height of females 5' and under, in such communities, speak to physical deterioration and consumption and other wasting diseases prevalent amongst them tell their own tale. I regret I, a layman, cannot give, the details asked for.

12. Yes.

13. Since 1925 there has been further development of public opinion in my part of the country in favour of an extension of the Age of Consent owing to several social reform movements, but in communities susceptible to such agitation, though it is not general. The lowest strata have not been touched. They do as their forefathers did—follow the bad custom if it exists, and do not practise premature cohabitation if it does not exist.

14. No.

15. Yes. Such communities (mostly Hindu) as maintain horoscopes of their children can furnish reliable evidence on the point, if they choose to. As for others, the Birth and Death Registers have to be depended on, and School Registers, if the girl has attended a school. Birth and Death Registers are maintained by Municipalities in cities and by village officers in rural areas under orders of Government in the Bombay Presidency, and penalties have been prescribed for not reporting births and deaths. The entries, in the case of births are made immediately after birth, but a child is named for the first time a week or two after the birth. So all that is registered is A (father's name)—date of birth—and a male or a female child. Illiterate parents of the lowest classes make a mess in identifying the child, if they had many and lost some children. One suggestion I can make to minimize the difficulties in a country where the State has to maintain such records for a majority of the population is that the first entries of births should be supplemented with the names of the children after they have been named and initiated by a responsible officer of the town or village.

16. Yes; because more pronounced data for medical examination and ocular inspection would be available.

17. Yes; I would suggest higher punishment for extra-marital offences, because over and above brutality there are sordid motives, cheating and a lot of inhuman conduct in the commission of the crime.

18—19. I would leave these and the question of punishment to lawyers.

20. In my opinion penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage. The alternative would be in-consonance with public opinion in my part of the country.

21. The nation that is hastening on the road to Swaraj ought to accelerate physical fitness for marital services expected of the citizens. Penal measures would give much needed sanction and fillip to social reform by means of education and social propaganda. Owing to the fundamental changes in the political constitution of India, there ought to be a Spartan resolve to have citizens fit to bear marital burdens.

Written Statement, dated the 6th November 1928, of Ahmedabad Municipality, Ahmedabad, forwarded by the Chairman, Lady Vidya-gayri Ramanbhai Nilkanthi.

1. Educated classes in this part of the country are all in favour of raising the present Age of Consent and they welcome the idea. A large majority of men and women of this city have expressed their view that the age should be raised to 16 in marital cases and to 18 or 20 in extra-marital cases. This committee of the Ahmedabad Municipality is of opinion that a

{ legislation to fix the minimum age of marriage should be brought into force. This age should be 16 in the case of girls and 20 in the case of boys. Because, even if the Age of Consent is raised to 16 in marriage, many evil consequences of early marriage, such as child-widows, would not be prevented. Moreover, so long as the minimum age of marriage is not fixed by law, the law of the Age of Consent is likely to remain inoperative, as there are very few chances of its being brought to light. Except in extreme cases where the results of early consummation are severely detrimental and patent, no notice will be taken of it. The committee therefore believes that the ultimate goal of our legislature should be the raising of age of marriage.

2. The Committee are positive on the point that religious injunctions do not come in the way of raising of Age of Consent. The chief obstacle is custom. People have no courage of conviction to oppose old customs. They would therefore be in favour of legislation which would free them from these fetters.

3. In the opinion of this Committee the offences against the law of Age of Consent should be made cognisable. But in order to avoid Police interference and also to safeguard the future interests of the married life of the couple, they suggest that the birth registering authorities should be empowered to find out the real age of a girl at the time of the birth of her child and if they find consummation of marriage to have taken place at a time earlier than that prescribed by law they should have the right to prosecute the husband. This procedure would obviate the necessity of the wife or wife's relatives to go to Court.

4. The Committee think that all cases of non-compliance with the Act of Age of Consent should be conducted in camera. They hold that if the age of marriage and that of consent is not made the same by law, i.e., 16 years, the punishment in marital cases should be imprisonment for 10 years where the age of the girl is less than 13 and 2 years where the girl's age is above 13 and below 14, and two months where the girl is under 16 and above 14. Imprisonment is necessary in all cases.

In cases where the age of the offending boy is below 18 his parents and not he should be punishable.

The Committee express their hope that in view of the large number of persons advocating a still higher age than that proposed in the Bill our legislators will not fail to enact this very important piece of legislation.

Written Statement of Mr. KESHAYLAL MAGANLAL TRIVEDI, Raipur, Ahmedabad.

1. The present law of the Age of Consent cannot be considered satisfactory. Because such a law is not called for in the case of a husband and wife, lawfully wedded. Besides it is attended with evil results as it comes in the way of nature.

2. The following are the reasons why the existing law should not continue. It is desirable that the Age of Consent should be 16, or even higher in the case of extra-marital relations. But now-a-days educated parents keep their girls unmarried even after they attain puberty on account of their avidity for education. But it is against the Shastras. It is a sin and owing to the absence of good bridegrooms, is attended with evil. The Parashara Smriti which is considered the best authority in Kaliyug, gives the following verses in Chapter VII:—

प्राप्ते तु द्वादशे वर्षे यः कन्यां न प्रयच्छति ।

मासि मासि रजस्तस्याः पिबन्ति पितरोऽग्निशम् ॥ ५ ॥

माता चैव पिता चैव ज्येष्ठोभ्राता तथैव च ।

त्रयस्ते नरके यान्ति दृष्ट्वा कन्यां रजस्वलाम् ॥ ६ ॥

यस्तां समुद्धहेत्कन्यां ब्राह्मणो मदमोहितः ।

असंभास्योऽह्यपांक्तेयः सविप्रो वृषलीपतिः ॥ ७ ॥

यः करोत्येकरात्रेण वृषलीसेवनं द्विजः ।

स भैक्ष्यभुग्नपान्त्रित्यं त्रिभिर्वर्षैर्विशुद्धति ॥ ८ ॥

Therefore, to protect the unmarried girls, it is necessary that the age (in extra-marital cases) should be higher. So also the age must be raised in cases where a man keeps connection with a woman who is not his married wife. Because many rascals entice married girls, and set up a defeuce of her consent because the age limit is too low. The poor girls then became outcastes. Therefore the raising of the age in such relations would be salutary.

2. But it is fruitless to control those who are bound by marriage ties. And those cases that have so far come to Court in such relations are the result of private animosities. So that this law is a friend of those who avenge family quarrels. So that the law that was intended to be the girl's friend has been her onomy. And in those classes among Hindus in whom widow marriage is prohibited, a man who is convicted of such an offence, leaves off his wife for good and then she has to lead the life of a widow ever after. Therefore the present law is doing no good to the married pair and nor will it ever do so.

3. No. But I think it is due to the present education and ideas of independence.

4. No. Even if the present law had not been there, these things would not have taken place.

(1) Adultery would creep in.

(2) This idea would spread among people.

(3) Marriages must take place before puberty.

5. According to circumstances between 12 and 13. But the age differs with different castes. Specially among castes that are considered to be uneducated, e.g., Rabaris and among people living in villages puberty comes between 13 and 14. The reason is that city people live in a poisonous atmosphere. The main reason is that girls of the educated classes go to school and for higher studies, girls and boys go to one school and read undesirable books and magazines and see dramas and cinemas. They become imaginative and frequent talk and reading on these subjects make them prone to early puberty. Owing to these stimulations, they are likely to become loose in conduct.

6. No.

(1) No.

(2) Yes.

(3) No.

Such cases do not come to Court.

7. Immediately after puberty, cohabitation takes place. This custom is according to Shastras and such an action is incumbent on the husband. Says Manu—

ऋतुकालाभिगमिष्यात् स्वदारानिरतः सदा ।

पर्ववर्जं व्रजेच्चैनां तद्व्रतो रतिकां मया ॥ ३ ॥ ४५

ऋतुज्ञाता तु या नारी भर्तारं नोपगच्छति ।

सा मृता नरकं याति विधवा च पुनः पुनः ॥ पराशर ७-१४ ।

ऋतुस्नातांतु यो भार्यां सन्निधौ नोपगच्छति ।

धोरायां मूणहत्यायां युज्यते नात्र संशयः ॥ ७।१५

दरिद्रं व्यधितं मूर्खं भर्तारं यावमन्यते ।

सा शुनी जायते स्त्वा सूकरीच पुनः पुनः ॥ पाराशर ७।१६

S. Among us Gujratis the Garbhadhan is not generally performed at the proper time. It is performed if a man thinks it necessary. But there is a similar ceremony which is rigidly observed in every family. A girl is sent to her father-in-law's house only after she attains puberty or after she is 12. In certain high castes, a ceremony is performed at that time. Between the marriage ceremony and this ceremony, a father does not send his daughter to her father-in-law's house except on very rare and special occasions. In the meanwhile the girl naturally attains womanhood. The following verse is in connection with this:—

रोमदग्नेनसंघाते सोमो मुंहेत्य वन्यकाम ।

रजोदृष्टा नृ संवदे कुर्वीदृष्टा नृ पावकः ॥ १ ॥

Notes on a Visit to Villages by the Age of Consent Committee.

The Committee visited the villages of Aslali and Jatalpur on the morning of the 17th October 1928.

These villages are situated at a distance of ten miles from Ahmedabad.

Aslali contains a population of about 1,600 persons, comprising all classes. It contains a School for boys, which has 114 boys on its rolls, out of whom only 93 were present. Four of these boys were married, namely:—

- (1) by caste Thakorda aged 8 years, married 2 years ago;
- (2) by caste Pattidar aged 12 years, married last year;
- (3) by caste *Darzi*, aged 11 years, married last year, and
- (4) by caste Nai aged fourteen years, married 1½ years ago. The oldest boy, belonging to the Knuhi caste was described as 15 years old, and is still unmarried.

There is also a School for girls at Aslali. It has 65 girls, out of whom about 10 were married. The ages of the married girls varied mostly from 8 to 15 years. But one Brahmin girl was described as having been married at 9 and became a widow at 11, and to be now about 22 years old. Most of the girls both married and unmarried were poor in physique and looked much younger and ill developed for their ages and it was not suggested that the consummation of marriage had taken place in the case of any of the married girls.

It was ascertained that the usual age for marriage among Brahmins was 8 to 13 years, among Vaishyas 10 to 15 years, among Pattidars 10 to 15 years, among Kumhars 10 to 12 years, among Rahbaris, 12 or 13 years, and among Thakordas (Bhils, Kolis, etc.), 10 years. It was also stated that except among Kumhars, Rahbaris and Thakordas, a girl married was usually taken away after the marriage by the bridegroom's party.

The villagers were asked individually and collectively whether they would like to have the age for marriage raised. In general they agreed to 14 being fixed for girls and 18 for boys, but a few desired that the age of 16 should be fixed for girls and 20 for boys. Asked why they did not enforce that practice, they stated that village Panchayats, consisting of representatives of different castes should be placed in charge of enforcing the rule and reporting recusant cases.

Early maternity was stated to be uncommon, and no case of maternity below 16 was known.

At Jetalpore, the Committee found 92 boys present at the Boys Primary School, out of whom 17 were married, namely:—

- (1) a Karwa Pattidar, aged 12 years, married at 8,
- (2) another of the same caste, aged 9 years, married at 5,
- (3) a Lewa Pattidar, aged 7 years, married at 6,
- (4) a Kumhar, aged 8 years, married at 5,
- (5) and (6) Pattidars, aged 12 years, married at 7;
- (7) a Pattidar, aged ten years, married at 5,
- (8) a Pattidar, aged 16 years, married at 15,
- (9) a Pattidar, aged 9 years, married at 2,
- (10) a Barber, aged 13 years, married at 12,
- (11) a Pattidar, aged 11 years, married at 6,
- (12) a Kumhar by caste, 13 years, married at 12,
- (13) a Pattidar, aged 15 years, married at 7,
- (14) another, aged 14 years, married at 13,
- (15) another, aged 12 years, married at 6,
- (16) another, aged 14 years, married at 9,
- (17) and another, aged 16 years, married at 15

In the girls' school at Jetalpore, there were 38 girls in attendance, out of whom 9 were married as given below:—

- (1) a Darzi girl, aged 10 years, married at 9,
- (2) a Karwa Pattidar girl, aged 11 years, married at 6,
- (3) a Karwa Pattidar girl, aged 6 years, married at about 2.
- (4) a Karwa Pattidar girl, aged 6 years, married at about 2,
- (5) a Karwa Pattidar girl, aged 9 years, married at about 4,
- (6) a Karwa Pattidar girl, aged 6 years, married at 2,
- (7) a Garhwa Rajput girl, aged 7 years, married at 4,
- (8) a Sonar girl, aged 7 years, married at 6, and
- (9) a Karwa Pattidar girl, aged 12 years, married at 7.

The girls looked mostly thin and of poor physique, and no consummation was stated to have taken place.

The villagers were agreeable to consummation being postponed, but were opposed to a law fixing the age of marriage. Generally they favoured the idea of lambardars or Talatis and village Panchayats being entrusted with the power to report breaches of the law. Kunbis or Pattidars preponderate in the village. It has also got people of other castes, besides on Mohamedan family and 8 families of depressed classes.

Among the persons who had gathered at the Boys Primary School was a boy, said to be living with his mother. He described himself as 19 years old, and said that he was married at 7, that his wife was now 12 years old, and that she was living with him from a year at his house. He looked much younger for his age and seemed hardly to realize his responsibility in the matter. He was by caste a *Karwa Pattidar*.

The Committee visited the following Maternity Homes at Ahmedabad, on the 18th October 1928:—

1. *The Parvati Maternity Hospital*.—This Hospital was opened two months ago and has an outdoor Department for males and females and a maternity ward on the second floor. It has accommodation for 24 beds, out of which 9 were occupied. There was only one case of a girl 15 years old, who gave birth to her first child 4 lbs. in weight, and two cases of girls 16 years old, one of whom gave birth to a baby 4½ lbs. in weight and another 6 lbs. in weight. The other maternity cases were of girls older than 16 years.

2. *The Victoria Jubilee Hospital*.—This Hospital provides maternity accommodation for 86 beds and receives a grant-in-aid from the Government. The figures for early maternity have been supplied by the Lady Doctor in charge in her evidence.

3. *The Achrafat Maternity Home*.—This Home was started on the 1st December 1925. In all 1,185 cases have been dealt with since. Out of 28 beds 21 are now occupied. There has been only one maternity case of 14 years age, 9 of 15 years age, and 33 of 16 years age. The weight of the baby in the first cases was 4½ lbs. That the other cases varied from 5½ to 6 lbs.

All these Maternity Homes are well managed and neatly kept, and the arrangements made are commendable.